TEXAS REGISTER

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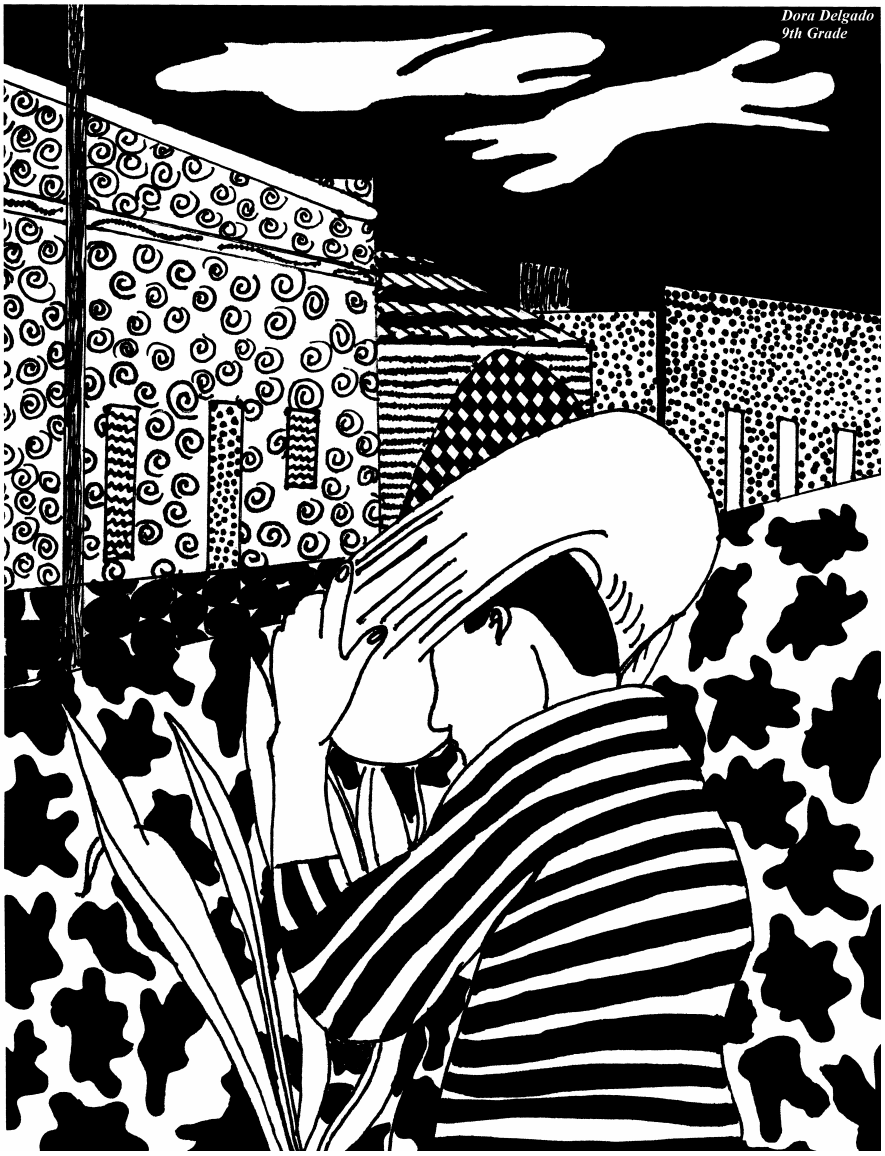

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0454-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a home-rule city is required to improve and maintain an unimproved dedicated public right-of-way within city limits so that the city may provide municipal services to adjacent property annexed by the city (RQ-0454-GA)

Briefs requested by April 8, 2006

RQ-0455-GA

Requestor:

The Honorable Frank J. Corte Jr.

Chair, Committee on Defense Affairs and State-Federal Relations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Application of section 552.0037, Government Code, which makes subject to the Public Information Act certain information held by entities that are authorized to take property by eminent domain but that are not "governmental bodies" (RQ-0455-GA)

Briefs requested by April 8, 2006

RQ-0456-GA

Requestor:

The Honorable Jim Kuboviak

Brazos County Attorney

300 East 26th Street, Suite 325

Bryan, Texas 77803

Re: Status of the city of Millican (RQ-0456-GA)

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200601649
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: March 15, 2006

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 29. ECONOMIC DEVELOPMENT

SUBCHAPTER B. "TEXAS YES!" PROGRAM RULES

DIVISION 1. GENERAL RULES

4 TAC §29.21, §29.23

The Texas Department of Agriculture (the department) proposes amendments to Chapter 29, Subchapter B, Division 1, §29.21 and §29.23, concerning the department's "Texas Yes" program rules. The amendments are proposed to modify eligibility requirements for business and community members in the department's "Texas Yes" Program, a promotional program designed to support and increase economic activity in rural Texas communities. The proposed amendments to §29.21 delete the term "rural area" from the list of definitions, and revise the definitions for a "Texas Yes!" business member and a "Texas Yes!" community member to clarify those definitions to make them consistent with current practice, and delete the reference to rural areas or communities. The proposed amendments to §29.23 provide revised eligibility requirements for community and business membership to make them consistent with the amendments to §29.21 and with current practice.

Robert Wood, assistant commissioner for rural economic development, has determined that for the first five-year period the proposed amended sections are in effect there will be no fiscal implications for state or local government as a result of administering or enforcing the proposed amended sections.

Mr. Wood has also determined that for each year of the first five years the proposed amended sections are in effect, the public benefit anticipated as a result of administering and enforcing the amended sections will be an increase in economic activity in rural Texas communities. There no cost anticipated to microbusinesses, small businesses or individuals required to comply with the sections, as amended.

Comments may be submitted to Robert Wood, Assistant Commissioner for Rural Economic Development, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §29.21 and §29.23 are proposed under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and the Code, §12.027, which authorizes the department to maintain an economic development program for rural areas within the state.

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 12.

§29.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) Non-metropolitan county--A Texas county that is not located in a metropolitan statistical area, as identified by the U.S. Census

(4) [~~(3)~~] Person--An individual, firm, partnership, corporation, governmental entity, cooperative organization, or association of individuals.

[~~(4) Rural Area--~~]

[~~(A) any non-metropolitan area (as defined by the United States Census);~~]

[~~(B) any unincorporated area; and~~]

[~~(C) any city with a population under 20,000 that does not adjoin another group of cities with an aggregate population of 50,000 or more.~~]

(5) "Texas Yes!" associate member--A person that wishes to support rural communities and businesses and who is granted limited "Texas Yes!" membership.

(6) "Texas Yes!" business member--A sole proprietor, partnership, cooperative organization or corporation, whose principal place of business is in Texas and who has a business location in:

(A) a non-metropolitan county [~~rural area of Texas~~] ;

(B) an unincorporated area; or

(C) a Texas city with a population of less than 20,000 that does not adjoin another city or group of cities with an aggregate population of 50,000 or more; and

(D) who is granted limited "Texas Yes!" membership.

(7) "Texas Yes!" community member--Any [~~A rural~~] community that is:

(A) either a non-metropolitan county, or a Texas city with a population of less than 20,000 that does not adjoin another city or group of cities with an aggregate population of 50,000 or more;

(B) wishes to support rural businesses and communities; and

(C) is granted full "Texas Yes!" membership.

(8) - (9) (No change.)

§21.23. Eligibility for Community, Business and Associate Membership.

(a) Any non-metropolitan county, or any Texas city with a population of less than 20,000 that does not adjoin another city or group of cities with an aggregate population of 50,000 or more, [~~town,~~ ~~county~~ ~~or governmental~~ ~~entity,~~ ~~that~~ ~~is~~ ~~located~~ ~~in~~ ~~a~~ ~~rural~~ ~~area~~ ~~of~~ ~~the~~ ~~state~~ ~~of~~ ~~Texas~~] is eligible for "Texas Yes!" community membership.

(b) Any business is eligible for membership as a "Texas Yes!" business member [~~that~~] if it has its principal place of business in Texas and has a business location in:

(1) a non-metropolitan county;

(2) an unincorporated area; or

(3) a Texas city with a population of less than 20,000 that does not adjoin another city or group of cities with an aggregate population of 50,000 or more [~~rural~~ ~~area~~ ~~of~~ ~~the~~ ~~state~~ ~~of~~ ~~Texas~~ ~~is~~ ~~eligible~~ ~~for membership~~ ~~as~~ ~~a~~ ~~"Texas~~ ~~Yes!"~~ ~~business~~ ~~member~~].

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2006.

TRD-200601580
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.9

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to §1.9(f), concerning the qualified contract request processing fee. This amendment is proposed to correct the fee charged for a qualified contract request.

Mr. William Dally, Acting Executive Director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Dally has also determined that for each year of the first five-years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow for more meaningful public input to the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Emily Price, Multifamily Housing Specialist, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, emily.price@tdhca.state.tx.us, or by fax (512) 475-1895, within thirty days of this notice.

This amendment is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by this section.

§1.9. Qualified Contract Policy.

(a) - (e) (No change.)

(f) Qualified Contract Request. An owner may file a Qualified Contract Request (Request) anytime after approval that the owner is eligible to submit a Request has been received in writing from the Department.

(1) The following documentation that must be submitted with the Request:

(A) - (N) (No change.)

(O) Non-refundable processing fee in an amount equal to the lesser of $3,000.00 or one fourth of one percent of the QC Price determined by the CPA.

(P) (No change.)

(2) - (3) (No change.)

(g) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2006.

TRD-200601579
William Dally
Acting Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 475-4595

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PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

The Texas Residential Construction Commission proposes amendments to §§305.1, 305.2, 305.4, 305.5, 305.21 - 305.23, 305.26, 305.28, 305.30 - 305.32 and 305.40 of 10 TAC Chapter 305, regarding the procedures for hearings and disciplinary actions. In addition, the commission intends to repeal §305.24 and §305.25 upon the effective date of adoption of these proposed amendments because the amended sections incorporate the provisions currently contained in those two sections.

Generally the proposed amendments eliminate superfluous language and redundancies and restate procedures to more clearly describe commission practices.

Specifically, the proposed amendments to §§305.1, 305.2, 305.4, 305.5, 305.26 and 305.40 eliminate redundant and superfluous language. The proposed amendments to §305.21 state more clearly the process of registration and renewal denial procedures. The proposed amendment to §305.22 eliminates language regarding informal resolution procedures that is consolidated into §305.23 and §305.31 by amendments proposed herein.

Proposed amendments to §305.28 revise the referral of matters to the State Office of Administrative Hearings (SOAH) to incorporate the proposed changes to the informal notice of violations. Proposed amendments to §305.30 state the commission's practice with regard to selection of venue. Proposed revisions to §305.31 allow the commission to show that service at the last address provided to the commission in accordance with commission rules is sufficient for providing notice of hearing. Proposed amendments to §305.32 allow SOAH to enter a default judgment if a respondent fails to appear after notice of hearing.

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the proposed amended rules are in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for state or local government as a result of enforcing or administering the sections.

Ms. Durso has also determined that for the first five years the amended rules are in effect the public will benefit from more clear and precise rules that explain how to participate in the disciplinary actions and hearing procedures of the commission. There will not be an effect on individuals, or large, small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amended rules are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed amendments may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Suite 200, Austin, Texas 78701 or by fax to (512) 475-2453. Comments may also be submitted electronically to susan.durso@trcc.state.tx.us. For comments submitted electronically, please include "Amended Procedural Rules" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§305.1, 305.2, 305.4, 305.5

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.008, regarding denial of a certificate of registration; Property Code §430.008, regarding registration of third-party warranty companies; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

No other statutes, articles or codes are affected by these proposed amendments.

§305.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the Texas Residential Construction Commission that will promote just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.

(b) Scope.

(1) This chapter shall govern the initiation, conduct and determination of proceedings required or permitted by law, including proceedings referred to the State Office of Administrative Hearings (SOAH).

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers or authority of the commission, commission staff, or the substantive rights of any person.

(3) This chapter shall control the practice and procedure of all commission proceedings to include SOAH proceedings [~~unless preempted by statute or SOAH rules~~].

§305.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Title 16, Property Code.

(2) Administrative law judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(3) Agency--The divisions, departments and employees of the Texas Residential Construction Commission.

(4) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(5) Applicant--A person seeking a registration or certification from the commission.

(6) Attorney of record--A person licensed to practice law in Texas who has provided the commission staff with written notice of representation of a person.

(7) Authorized representative--An attorney of record or any other person who has been designated in writing by a person to represent that person in a proceeding.

(8) Business day--A day on which the commission is open to conduct business.

(9) Certificate of Registration--A document depicting a grant of commission approval, registration or similar form of permission authorized by law.

(10) Commission--The Texas Residential Construction Commission.

(11) Commissioner--One of the members of the commission appointed pursuant to the Act.

(12) Complaint--Pleading filed with the commission alleging a violation of the Act or a commission rule or other matter over which the commission has authority to take disciplinary action.

(13) Contested case--A proceeding, including but not restricted to the denial of registration or certification, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for an administrative hearing.

(14) Continuing violation--Any instance in which the person alleged to have committed a violation attests that a violation has been remedied and subsequent investigation reveals that the violation has not been remedied.

(15) Days--Calendar days, not business days, unless otherwise specified.

(16) Documents--Applications, petitions, complaints, motions, protests, replies, exceptions, answers, notices, or other written instruments filed with the commission in a commission proceeding.

(17) Executive Director--The executive officer of the agency or the authorized designee of that executive officer [~~the Executive Director~~].

(18) Hearing--Any proceeding in which evidence is taken on the merits of the matters at issue, not including a pre-hearing conference.

[~~(19) Informal resolution process--Any proceeding involving matters before the commission prior to the filing of a pleading at SOAH~~].

(19) [~~(20)~~] Party--The commission and each person named or admitted as a party in a contested proceeding before the commission or SOAH.

(20) [~~(21)~~] Person--Any individual, partnership, corporation, association, governmental subdivision, or public, private organization, or other entity however organized.

[~~(22) Petition--Pleading filed at SOAH by the commission alleging the reasons for the denial of a certificate of registration or certification.~~]

(21) [~~(23)~~] Pleading--A written document submitted by a party or person seeking to participate as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal arguments, or otherwise addresses matters involved in a commission proceeding.

(22) [~~(24)~~] Prehearing Conference--Any conference or meeting of the parties, prior to the hearing on the merits, on the record and presided over by a presiding officer.

(23) [~~(25)~~] Presiding officer--The commission, any commissioner, or administrative law judge presiding over a proceeding.

(24) [~~(26)~~] Probationer--A registrant who is under a commission order of suspension.

(25) [~~(27)~~] Proceeding--Any hearing, [~~investigation, inquiry or other fact-finding or decision-making procedure,~~] including the denial of relief or the dismissal of a complaint, conducted by the commission or SOAH.

(26) [~~(28)~~] Registrant--Any person to whom the agency has issued a certificate of registration, certification, approval or similar form of permission authorized by law.

(27) [~~(29)~~] Registration--The agency process relating to the granting, denial, renewal, revocation, cancellation, suspension, limitation, reinstatement or re-issuance of a certificate of registration.

(28) [~~(30)~~] Respondent--A person under the commission's jurisdiction against whom any complaint or appeal has been filed or[~~,~~] who is under formal investigation by the commission [~~who is the recipient of a notice of violation~~].

(29) [~~(31)~~] Rule--Any agency statement of general applicability that has been formally adopted in accordance with the APA that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this commission. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

(30) [~~(32)~~] SOAH--The State Office of Administrative Hearings.

(31) [~~(33)~~] SOAH hearing--A public adjudication proceeding at SOAH.

(32) [~~(34)~~]SOAH rules--1 Texas Administrative Code §§155.1 - 155.59.

[~~(35) Texas Public Information Act--Texas Government Code, Chapter 552.~~]

[~~(36) Texas Register--A weekly publication issued by the Texas Secretary of State's office.~~]

(33) [~~(37)~~] Violation--Any activity or conduct prohibited by the Texas Residential Construction Commission Act, commission rule or commission order.

(34) [~~(38)~~]Witness--Any person offering testimony or evidence at a commission or SOAH proceeding.

§305.4. Agreement to be in Writing.

No stipulation or agreement between the parties, with regard to any matter involved in any commission proceeding, shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a SOAH hearing or a deposition, or incorporated into an order bearing their written approval. [~~This subsection does not limit a party's ability to waive, modify or stipulate any right or privilege afforded by these sections, unless precluded by law.~~]

§305.5. Appearances Personally or by Representative.

(a) An individual may appear on his or her own behalf or by an authorized representative. [~~This right may be waived.~~]

(b) A person may appear and be represented by any authorized representative.

(c) Any individual who is not a licensed member of the State Bar of Texas and who is appearing as the authorized representative of a person must produce a written statement executed by the individual represented that acknowledges the representative's authority to appear on behalf of the individual and states any limitations on the extent of the authority to act on behalf of the individual represented. The original or a notarized copy of the authorization must be provided to the commission at least three days prior to the appearance of the authorized representative in a proceeding or SOAH hearing unless waived by the commission [~~or SOAH~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601545
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 463-2886

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SUBCHAPTER B. DISCIPLINARY PROCEEDINGS

10 TAC §§305.21 - 305.23, 305.26, 305.28

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.008, regarding denial of a certificate of registration; Property Code §430.008, regarding registration of third-party warranty companies; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

No other statutes, articles or codes are affected by these proposed amendments.

§305.21. Commission Actions.

(a) Pursuant to §418.002 and §419.001 of the Act, the commission, upon finding that a person has committed a prohibited act under the Act or commission rule, shall enter an order imposing one or more of the following actions:

~~[(1) deny the person's registration or certification application;]~~

(1) [~~(2)~~] administer a formal or informal reprimand;

(2) [~~(3)~~] revoke or suspend a person's certificate of registration or certification;

(3) [~~(4)~~] assess an administrative penalty against the person; [~~and/~~]or

(4) [~~(5)~~] initiate an action to enjoin a person from further action in violation of the Act or commission rule.

(b) The commission may stay enforcement of any order and place the person on probation. The commission shall retain the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of the probation or to impose any other disciplinary action as provided in subsection (a) of this section in addition to or instead of enforcing the original order.

(c) The time period of an order shall be extended for any period of time in which a person subject to an order subsequently resides or does business outside the State of Texas or for any period during which the person's registration or certification is subsequently cancelled or expires for nonpayment of registration or certification fees.

(d) Pursuant to §416.008 of the Act and 10 TAC Chapter 303, Subchapter A, the commission, upon finding that an applicant for registration as builder is unqualified, shall deny the applicant's original or renewal application.

(e) Pursuant to §430.008 of the Act and 10 TAC Chapter 303, Subchapter D, the commission, upon finding that an applicant for registration as a third-party warranty company is unqualified, shall deny the applicant's original or renewal application.

§305.22. Administrative Penalties.

(a) Imposition of a penalty. In a contested case involving disciplinary action, the commission may, as part of the commission's order, impose an administrative penalty against a registrant who commits a violation or continuing violation.

(b) Amount of penalty.

(1) Each day a violation occurs is a separate violation for which a penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The penalty for each separate violation may be in an amount not to exceed $5,000.00.

(3) The amount of the penalty shall be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent and gravity of any prohibited acts;

(B) the history of previous violations;

(C) the amount necessary to deter future violations;

(D) efforts to correct the violation; and

(E) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.

~~[(4) Payment of penalty. Within 30 days after the date the person receives the notice set forth in §305.23 of this subchapter, the person may accept the determination and recommended penalty through a written statement sent to the Executive Director. If this option is selected, the person shall submit a written statement to the commission. The commission, by written order, shall approve the determination and impose the recommended penalty. Payment of an administrative penalty shall be made in accordance with the commission order.]~~

~~[(5) If a person chooses to request an informal settlement conference or hearing rather than accept the recommended administrative penalty, then the person shall follow procedures set for in §305.24 or §305.25 of this subchapter.]~~

§305.23. Informal Notice of Violation.

(a) The Executive Director shall refer a person who is believed to have committed a violation of Chapter 418 of the Act or commission rules to SOAH only after the commission has informed the person of the violation in writing and provided the person an opportunity to cure the violation. ~~[If the Executive Director alleges that a person has violated the Act or commission rule or order, the Executive Director may recommend commission action and issue a notice of violation.]~~

(b) If the commission becomes aware of a person acting as a builder who is not registered with the commission, the commission will inform the person of the registration requirement in writing and provide the person with a reasonable opportunity to register. If the person fails to timely register, the commission, on relation of the Attorney General at the request of the commission, may also bring an action in district court to enjoin the person from engaging in or continuing a violation of the Act or commission rules or doing an act that furthers a violation of the Act or commission rules . In the action, the court may enter an order awarding a preliminary or final injunction. ~~[The notice of violation shall provide the person with written notice of the opportunity to attend and participate in an informal resolution process or an administrative hearing before SOAH. The notice shall be delivered to the applicant or registrant by certified mail, return receipt requested, overnight or express mail, or registered mail.]~~

~~[(c) The notice shall include:]~~

~~[(1) the basis for denial or ineligibility or a description of the alleged violations of the Act or commission rule:]~~

~~[(2) a listing of the applicable provisions of the Act or commission rule;]~~

[(3) a summary of the alleged facts;]

[(4) a copy of any exhibit upon which the denial or alleged violation is based;]

[(5) the recommended penalty, including the amount of any monetary penalty recommended;]

[(6) methods to respond to notice;]

[(7) options for resolving the matter informally; and]

[(8) a statement that failure to respond to the notice will result in a referral of the matter to SOAH for hearing.]

§305.26. Modification or Termination of [Agreed] Orders.

(a) Unless the commission order specifies that the order shall or will be modified or terminated upon the fulfillment of certain conditions or the occurrence of certain events, the decision to modify or terminate a commission order shall be a matter for the exercise of sound discretion by the commission.

(b) Modification or termination requests shall not be contested matters, but instead shall be matters to be ruled upon through the exercise of sound discretion by the commission.

(c) If a commission order sets out certain conditions or events for granting modification or termination of an order, the respondent shall have the burden of establishing that such conditions or events have taken place or been met.

(d) If, by the terms of the order, no specific conditions or events trigger the requirement that the request be granted, the respondent has the burden of proof of demonstrating that one or more of the following factors should be considered for purposes of analyzing the merits of the request and exercising sound discretion:

(1) whether there has been a significant change in circumstances which indicates that it is in the best interest of the public and the registrant to modify or terminate the order;

(2) whether there has been an unanticipated, unique or undue hardship on the respondent as a result of the commission order which goes beyond the natural adverse ramifications of the disciplinary action (i.e., impossibility of requirement, geographical problems). Economic hardships are not considered unanticipated, unique or undue hardships;

(3) whether the respondent has engaged in special activities which are particularly commendable or so meritorious as to make modification or termination appropriate; or

(4) whether the respondent has fulfilled the requirements of the commission's order in a timely manner and cooperated with the commission and commission staff during the period of probation or restriction.

(e) Unless the terms of the commission order specify otherwise, requests for modification or termination shall be in writing and filed with the agency's General Counsel.

(f) Modification or termination requests may be made only once a year from the date the order was signed or from a prior request for modification or termination unless a commission order otherwise specifies, or upon an assertion in writing under oath by a person subject to a commission order indicating that a circumstance exists as described in subsection (d)(2) of this section. Upon receipt of the request, the agency's General Counsel shall determine whether such a request is valid and meets the requirements of subsection (d)(2) of this section. A finding by the General Counsel does not equate to such a finding by the commission.

§305.28. Referral to the State Office of Administrative Hearings (SOAH).

If a denied builder or third-party warranty company applicant requests a hearing, or if the Executive Director believes a person has committed a violation of Chapter 418 of the Act or commission rules, the Executive Director shall refer the matter to SOAH as set forth in this chapter. [If a respondent requests a hearing or if a respondent fails to respond to a notice of violation, the Executive Director shall refer the matter to SOAH as set forth in §305.30 of this chapter.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601546
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 463-2886

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SUBCHAPTER C. PROCEEDINGS AT SOAH

10 TAC §§305.30 - 305.32

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.008, regarding denial of a certificate of registration; Property Code §430.008, regarding registration of third-party warranty companies; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

No other statutes, articles or codes are affected by these proposed amendments.

§305.30. General Provisions and Venue.

(a) SOAH hearings of contested cases shall be conducted in accordance with the APA by an ALJ assigned by SOAH. Jurisdiction over the case is acquired by SOAH when commission staff files a SOAH-prescribed form, entitled "Request to Docket Case"[, accompanied by legible copies of all pertinent documents, including but not limited to the complaint, petition or other document describing the commission action giving rise to the contested case]. Unless otherwise provided, procedural rules for hearings [hearing] conducted at SOAH are adopted by reference under 1 TAC, Part 7, Chapter 155 [of the SOAH rules].

(b) Venue for all contested cases shall be in Travis County. Prior to the filing of a request to docket a contested case with SOAH, the Executive Director may elect to set venue in any other county with a permanent SOAH office. The decision to set venue outside of Travis County is final and unappealable.

§305.31. Notice of SOAH Proceedings.

(a) Notice.

(1) Before revoking or suspending any certificate of registration or certification, [denying an application for a certificate of registration or certification,] or reprimanding any registrant, the commission

will afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than ten days, except as otherwise provided by commission rule or the Act.

(2) Upon receiving written notice of an appeal of a denial of registration, the commission will make a request for hearing with SOAH within a reasonable time but not later than fifteen business days after receipt of the notice of appeal.

(b) The content of the notice shall be made in accordance with the provisions of §2001.052 of the APA.

(c) Service of notices of hearing shall be made to the parties' last known address submitted to the commission in accord with 10 TAC Chapter 303, Subchapters A, C or D, and 10 TAC Chapter 318, Subchapter B, as applicable, as reflected in the commission's records. Notice to such address by first class mail shall be prima facie evidence of adequate service.

§305.32. Default Proceedings [~~Availability of Alternative Dispute Resolution~~].

If, after proper notice, a respondent in a contested case fails to appear, commission staff may move to either dismiss the case from SOAH's docket or to request a default proposal for decision in which the allegations in the notice of hearing will be deemed admitted as true. [~~If mandated by an ALJ under SOAH rules, the commission shall make available to the parties alternative dispute resolution procedures described by Civil Practices and Remedies Code Chapter 154, as well as combinations of those procedures.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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For further information, please call: (512) 463-2886

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SUBCHAPTER D. POST-SETTLEMENT AND POST-HEARING MATTERS

10 TAC §305.40

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.008, regarding denial of a certificate of registration; Property Code §430.008, regarding registration of third-party warranty companies; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

No other statutes, articles or codes are affected by these proposed amendments.

§305.40. Final Orders.

(a) Form and Content.

(1) A final order, including a final agreed order, of the commission shall be in writing and signed on behalf of the majority by the Chair or by the commission's designee [~~the Vice-Chair or other presiding officer~~], if the Chair is unavailable, and reported in the minutes of the meeting in which action is taken.

(2) A final order, including a final agreed order, shall include findings of fact and conclusions of law separately stated and may incorporate findings of fact and conclusions of law proposed within a proposal for decision.

(3) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) Changes to Proposal for Decision [~~Recommendation~~]. In that the commission has been created by the legislature to protect the public interest as an independent agency of the executive branch of the government of the State of Texas so as to remain as the primary means of registering, regulating and disciplining residential home builders and remodelers and registering or certifying arbitrators and third-party inspectors, to protect the public interest and ensure that sound principles govern the decisions of the commission, it shall hereafter be the policy of the commission to change a finding of fact or conclusion of law or to vacate or modify any proposal for decision [~~proposed order~~] of an ALJ when the proposal for decision [~~proposed order~~] is:

(1) erroneous;

(2) against the weight of the evidence;

(3) based on unsound standards for statutory construction or construction of an agency rule;

(4) based on an insufficient review of the evidence; or

(5) not sufficient to protect the public interest.

(c) Changes to proposal for decision [~~proposed order~~]. If the commission modifies, amends, or changes the ALJ's proposal for decision, an order shall be prepared reflecting the commission's changes, the commission's justification(s) for the changes, and recorded in the minutes of the meeting in which action is taken.

(d) Notice. Parties shall be notified of the commission's final order pursuant to the requirements of APA §2001.142.

(e) Effective Date of Order. Unless otherwise stated, the date a final order, including a final agreed order, is signed by the Chair or commission's designee is the effective date of that order, and such date shall be stated therein.

(f) Administrative finality. A final order is administratively final:

(1) when absent the filing of a timely motion for rehearing upon the expiration of 20 days from the date respondent receives notice of the commission's order in accordance with subsection (d) of this section [~~the final order is entered~~]; or

(2) when a timely motion for rehearing is filed and the motion for rehearing is denied by commission order or operation of law as outlined in §305.41 of this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200601548

Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 463-2886

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.236

The Public Utility Commission of Texas (commission) proposes an amendment to §25.236, relating to Recovery of Fuel Costs. The proposed amendment deletes §25.236(a)(4) which prohibits an electric utility from recovering demand or capacity costs as fuel costs and adds §25.236(a)(8) which permits a utility to request costs for capacity or demand charges related to purchased power as eligible fuel costs under certain conditions. The proposed amendment also revises §25.236(d)(2) to reflect changes to Public Utility Regulatory Act (PURA) §36.058(c)(2) pertaining to affiliate transactions and deletes §25.236(g) relating to final fuel reconciliations as well as some other non-substantive changes. Project Number 29630 is assigned to this proceeding.

Rosa Rohr, Staff Attorney with the Legal Division, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Rohr has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be to clarify how electric utilities may recover reasonable purchased power costs and reduce the uncertainty associated with the recovery of such costs. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amended section. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Ms. Rohr has also determined that for each year of the first five years the proposed amendment is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, April 18, 2006. The request for a public hearing must be received within 24 days after publication of the proposed amendment.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 24 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 31 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendment. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amended section. The commission will consider the costs and benefits in deciding whether to adopt the amended section. All comments should refer to Project Number 29630.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §36.204 which grants the commission authority to allow additional incentives for purchased power and §36.205 which grants the commission authority over purchased power cost recovery.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 36.204 and 36.205.

§25.236. Recovery of Fuel Costs.

(a) Eligible fuel expenses. Eligible fuel expenses include expenses properly recorded in the Federal Energy Regulatory Commission Uniform System of Accounts, numbers 501, 503, 518, 536, 547, 555, and 565, as modified in this subsection, in effect on March 1, 2006 [~~as of April 1, 1997~~], and the items specified in paragraph (6) [~~(7)~~] of this subsection. Any later amendments to the System of Accounts are not incorporated into this subsection. Subject to the commission finding special circumstances under paragraph (5) [~~(6)~~] of this subsection, eligible fuel expenses are limited to:

(1) - (3) (No change.)

[~~(4) For Account 555, the electric utility may not recover demand or capacity costs.~~]

(4) [~~(5)~~] For Account 565, an electric utility may not recover transmission expenses paid to affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operating costs associated with transmission assets. A non-ERCOT electric utility may not recover expenses for transmission service [~~wheeling transactions. An ERCOT electric utility may recover only the expenses properly recorded in Account 565 for ISO fees related to planned and unplanned transmission service and for payments to parties related to unplanned transmission service, such as losses and re-dispatch fees~~].

(5) [~~(6)~~] Upon demonstration that such treatment is justified by special circumstances, an electric utility may recover as eligible fuel expenses fuel or fuel related expenses otherwise excluded in paragraphs (1) - (4) [~~(5)~~] of this subsection. In determining whether special circumstances exist, the commission shall consider, in addition to other factors developed in the record of the reconciliation proceeding, whether the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by

ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay.

(6) [~~(7)~~] Eligible fuel expenses shall not be offset by revenues by affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operation costs associated with transmission assets. In addition to the expenses designated in paragraphs (1) - (5) [~~(6)~~] of this subsection, unless otherwise specified by the commission, eligible fuel expenses shall be offset by:

(A) revenues from steam sales included in Accounts 504 and 456 to the extent expenses incurred to produce that steam are included in Account 503; and

[~~(B) revenues from wheeling transactions except for non-ERCOT electric utilities; and~~]

(B) [~~(C)~~] revenues from off-system sales in their entirety, except as permitted in paragraph (7) [~~(8)~~] of this subsection.

[~~(D) For electric utilities in ERCOT, revenues from third parties for unplanned transmission service, such as ISO fees, losses, and re-dispatch fees.~~]

(7) [~~(8)~~] [~~Shared margins from off-system sales.~~] An electric utility may retain 10% of the margins from an off-system energy sales transaction if the following criteria are met:

(A) the electric utility participates in a transmission region governed by an independent system operator or a functionally equivalent independent organization;

(B) a generally-applicable tariff for firm and non-firm transmission service is offered in the transmission region in which the electric utility operates; and

(C) the transaction is not found to be to the detriment of its retail customers.

(8) If the commission has authorized an electric utility to include purchased power capacity costs in its base rates and if the electric utility subsequently seeks to recover purchased power capacity costs through eligible fuel, such costs shall be included as an eligible fuel expense only to the extent that such costs are greater than the costs utilized to fix the base rates of the electric utility, as adjusted for load growth.

(A) Prior to requesting recovery of purchased power capacity costs as eligible fuel expenses, the electric utility must petition the commission for a determination of the amount of purchased power capacity costs already in base rates.

(i) The electric utility may not seek a determination under this paragraph in a proceeding to change its fuel factor.

(ii) The determination of the capacity costs in base rates shall be based upon the filings in the electric utility's most recent base rate proceeding. If the order in the electric utility's most recent base rate proceeding does not specify an amount of capacity costs in base rates, then an adjustment shall be made to the amount of purchased power capacity costs originally requested by the electric utility, based on the percentage change in base rate costs approved by the commission, compared to the utility's requested costs.

(iii) A load growth adjustment using the Texas retail average 12 coincident peak shall be applied to the amount of purchased power capacity costs in the electric utility's base rates. This adjustment shall be the percentage change from the test year of the most recent base rate case to the 12 months preceding the filing of the petition for determination. The load growth adjustment shall be recalculated whenever the fuel factor is adjusted.

(iv) The amount of purchased power capacity costs in base rates and the load growth adjustment are not subject to reconciliation in a fuel reconciliation proceeding.

(v) After the amount of purchased power capacity costs in the electric utility's base rates is determined, the electric utility shall reflect the determination in future fuel factor filings.

(B) Recovery of purchased power capacity costs as eligible fuel is prospective from the date the fuel factor takes effect.

(C) The amount of purchased power capacity costs in the fuel factor can be adjusted only in a fuel factor or base rate proceeding.

(D) Beginning on the effective date of new base rates, all capacity expenses associated with purchased power shall be excluded from base rates and shall be treated as eligible fuel expenses, and the load growth adjustment prescribed by subparagraph (A)(iii) of this paragraph shall no longer be applied.

(E) An electric utility subject to PURA §39.455 may not recover purchased power capacity costs through its fuel factor until the expiration of the rate rider pursuant to PURA §39.455.

(b) - (c) (No change.)

(d) Fuel reconciliation proceedings. Burden of proof and scope of proceeding are as follows:

(1) In a proceeding to reconcile fuel factor revenues and expenses, an electric utility has the burden of showing that:

(A) (No change.)

(B) if its eligible fuel expenses for the reconciliation period included an item or class of items supplied by an affiliate of the electric utility, the prices charged by the supplying affiliate to the electric utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate for the same item or class of items to its other affiliates or divisions or a nonaffiliated person within the same market area or having the same market conditions [~~to unaffiliated persons or corporations for the same item or class of items~~]; and

(C) (No change.)

(2) (No change.)

(e) - (f) (No change.)

[~~(g) Final fuel reconciliation. Notwithstanding the provisions of subsections (b) and (f) of this section, each electric utility's affiliated power generation company, except El Paso Electric Company's, shall file after January 1, 2002, a final fuel reconciliation according to the schedule in paragraphs (1) - (9) of this subsection. For the final fuel reconciliation, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within six months of the filing date, except for Reliant Energy, Central Power and Light and TXU Electric proceedings, which will be completed in eight months.~~]

[~~(1) West Texas Utilities - June 1, 2002;~~]

[~~(2) Reliant Energy - July 1, 2002;~~]

[~~(3) Southwestern Public Service - August 1, 2002;~~]

[~~(4) TXU Electric - October 1, 2002;~~]

[~~(5) Central Power & Light - December 1, 2002;~~]

[~~(6) Lower Colorado River Authority - February 1, 2003;~~]

~~[(7) Entergy Gulf States, Inc. - March 1, 2003;]~~

~~[(8) Texas-New Mexico Power Company - April 1, 2003; and]~~

~~[(9) Southwestern Electric Power Company - May 1, 2003.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2006.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.134

The Public Utility Commission of Texas (commission) proposes new §26.134, relating to the Market Test to be Applied in Determining if Markets with Populations Less Than 30,000 Should Remain Regulated on or after January 1, 2007. The proposed new rule will establish the requisite market determinants for the commission to determine whether a market should be regulated after January 1, 2007. Project No. 32169 is assigned to this proceeding.

Larry D. Barnes and Jim Tourtelott of the commission's Communication Industry Oversight Division and Legal Division, respectively, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Barnes and Mr. Tourtelott have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be effecting the requirements of PURA §65.052(f) in order to promote a more orderly transition to a new telecommunications environment. No adverse economic effects on small businesses or micro-businesses are anticipated as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Barnes and Mr. Tourtelott have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, Friday, May 5, 2006, at 10:00 a.m.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-33269, within 30 days after publication. Sixteen copies of comments on the proposed section are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted 40 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. All comments should refer to Project No. 32169.

In addition to providing comments on proposal as published, the commission requests comments on the following: How should the commission account for any situations in which robust telecommunications competition exists in a market, but the type of competitors in the market does not fit the competitors delineated in subsection (c)?

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, PURA §65.052(f), which requires *inter alia* "not later than November 30, 2006, the commission shall determine whether a market of an incumbent local exchange company in which the population in the area included in the market is less than 30,000 should remain regulated after January 1, 2007; the commission by rule shall determine the market test to be applied in determine whether the market should remain regulated;" and PURA §65.003(b) which gives the commission authority to "adopt rules and conduct proceedings necessary to administer and enforce this chapter, including rules to determine whether a market should remain regulated, deregulated, or should be re-regulated."

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 65.003, and 65.052(f).

§26.134. Market Test to be Applied in Determining if Markets with Populations Less Than 30,000 Should Remain Regulated on or After January 1, 2007.

(a) Purpose. The purpose of this section is to establish the market tests to be applied in determining if markets with populations less than 30,000 should remain regulated after January 1, 2007.

(b) Application. This section applies to all incumbent local exchange companies (ILECs), as defined in §26.5 of this title (relating to Definitions).

(c) Market Test--Markets as defined in Public Utility Regulatory Act §65.002 with a population of less than 30,000 shall be deregulated only if the ILEC providing services to such a market submits evidence demonstrating that the population in the market is less than 30,000 and in addition to the ILEC there are three competitors:

(1) of which at least one competitor is an entity providing residential telephone service in the market using facilities that the entity or its affiliate owns; and

(2) of which at least two competitors must be from two different categories of the following:

(A) a telecommunications provider that holds a certificate of operating authority or service provider certificate of operating authority and provides residential local exchange telephone service in the market;

(B) a provider in that market of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et. seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not affiliated with the incumbent local exchange company; and

(C) a satellite telecommunications provider certified as an eligible telecommunications carrier for the entire market pursuant to §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).

(d) Rural Exemption Waiver. In the event that an ILEC seeking deregulation of a market area with a population of less than 30,000 has a rural exemption as provided for in Section 251(f)(1) "Exemption For Certain Rural Telephone Companies" of the Communications Act of 1934, a petition for the removal of that rural exemption must be filed by the ILEC and approved by the commission in order for the market in question not to remain regulated. In addition, any such market must meet the conditions of the market test set forth in subsection (c) of this section.

(e) Timing:

(1) Markets shall be deregulated on January 1, 2007, only if the ILEC providing service to such a market(s) submits evidence on or before August 1, 2006, in compliance with subsection (c) of this section and, if applicable, subsection (d) of this section.

(2) After July 1, 2007, an ILEC petitioning for deregulation of a market with a population of less than 30,000 shall submit with its petition the evidence in compliance with subsection (c) of this section and, if applicable, subsection (d) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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CHAPTER 28. SUBSTANTIVE RULES APPLICABLE TO CABLE AND VIDEO SERVICE PROVIDERS

SUBCHAPTER B. PROVISIONS RELATING TO APPLICATION FOR A STATE-ISSUED CERTIFICATE OF FRANCHISE AUTHORITY

16 TAC §28.6

The Public Utility Commission of Texas (commission) proposes new Chapter 28, Substantive Rules Applicable to Cable and Video Service Providers and new §28.6 relating to State-Issued Certificate of Franchise Authority (CFA) Certification Criteria in compliance with PURA Chapter 66. Subchapter A, General Provisions, §§28.1 - 28.5 will be proposed at a later date. The proposed new §28.6 will establish the certification criteria for a State-Issued Certificate of Franchise Authority (CFA) to provide cable and/or video services in the state. This rule is necessary to implement the provisions of the Public Utility Regulatory Act (PURA), Chapter 66, §§66.001 - 66.004, and sets forth certain reporting requirements of CFA holders as well. Project Number 32171 is assigned to this proceeding.

Bill Franz, Director of Telecommunications, Legal Division, and Nara Srinivasa, Director of Telecom Network and Service Quality, Infrastructure Reliability Division have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the above-referenced section.

Mr. Franz and Mr. Srinivasa have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the orderly processing of applications for certificates of franchise authority. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to persons who are required to comply with the proposed section. These costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Mr. Franz and Mr. Srinivasa have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Comments on the proposed section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed section are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 32171.

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. PURA Chapter 66, grants the commission the authority to issue State-Issued Certificate of Franchise Authority to an entity to provide cable and/or video services in the state of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002, and Chapter 66, §§66.001 - 66.004.

§28.6. State-Issued Certificate of Franchise Authority (CFA) Certification Criteria.

(a) Scope and purpose. This section applies to the commission's certification of persons and entities to provide cable and/or video service as holders of a state-issued certificate of franchise authority (CFA), as established in the Public Utility Regulatory Act (PURA), Chapter 66, §§66.001 - 66.004.

(b) Application for CFA. An entity or person seeking to provide cable and/or video service in this state shall file an application for a CFA with the commission as provided in subsection (e) of this section.

(c) Eligibility to File Application.

(1) A cable service provider or a video service provider that currently has or had previously received a municipal franchise to provide cable service or video service is not eligible to seek a CFA to provide service in that municipality until the expiration date of the existing franchise agreement for such municipality.

(2) A cable service provider or a video service provider that currently has or had previously received a municipal franchise to provide cable service or video service may file an application for a CFA to provide service in such municipality no earlier than 17 business days before the expiration of the municipal franchise provided that the application requests issuance of the CFA after the expiration of the municipal franchise.

(3) For purposes of this subsection a cable service provider or video service provider will be deemed to have or have had a franchise to provide cable service or video service in a specific municipality if any affiliates or successor entity of the cable or video provider has or had a franchise agreement granted by that specific municipality. The terms "affiliates or successor entity" in this subsection include but are not limited to any entity receiving, obtaining, or operating under a municipal cable or video franchise through merger, sale, assignment, restructuring, or any other type of transaction.

(d) Procedure for reviewing CFA applications.

(1) The commission shall notify an applicant for CFA whether the application is complete before the 15th business day after the application was submitted.

(2) The commission shall issue a CFA before the 17th business day after the application, including the requisite affidavit, has been filed if the commission finds the application to be complete and sufficient.

(e) Standards for granting franchise authority to CFA applicants. An applicant for a CFA shall submit a completed Application for State Issued Certificate of Franchise Authority, which shall include the following items:

(1) An affidavit signed by an officer or general partner of the applicant affirming the following:

(A) the applicant has filed or will timely file with the Federal Communications Commissions (FCC) all forms that the FCC requires from entities seeking to provide cable or video services in Texas;

(B) the applicant agrees to comply with all applicable federal and state statutes and regulations;

(C) the applicant agrees to comply with all applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the cable and/or video service, including the police powers of the municipalities in which the service is delivered;

(D) all statements made in the Application for State Issued Certificate of Franchise Authority are true and correct.

(2) A description of the service area footprint to be served. Service areas may be an entire municipality or a portion thereof and may include incorporated areas as well as unincorporated areas. Acceptable service area descriptions include properly labeled maps that clearly define the service area using city/municipality limits, county boundaries, metes and bounds, subdivisions, and/or other geographic areas with distinct boundaries.

(3) The street address and telephone number of the applicant's principal place of business.

(4) The name, addresses, and telephone numbers of an authorized representative, a regulatory contact, and an emergency contact.

(5) The names of the applicant's principal executive officers.

(f) Name(s) on CFA.

(1) All cable and/or video services provided under a CFA shall be provided in the name under which certification was granted by the commission. The requested name(s) must be registered with the proper authorities to conduct business in Texas (*i.e.*, the Texas Secretary of State with the exception of sole proprietorships that are registered with the county in the requested service area), and may not be deceptive, misleading, vague, inappropriate, or duplicative of an existing CFA holder.

(2) The holder of the CFA may request commission approval to add, delete or change the name(s) on the franchise authority in accordance with subsection (g)(4) of this section.

(g) Amendments, Terminations and Transfers of a CFA.

(1) Termination of CFA. A CFA may be terminated by the certificate holder by submitting written notice to the commission. The CFA Termination Notice shall be filed with the commission in the project number established by staff for that purpose.

(2) Transfer of Ownership/Control. A CFA is fully transferable to any successor in interest to the entity to which the CFA was originally granted. The successor in interest shall file a written notice of transfer with the commission and the relevant municipality within 14 business days of the completion of such transfer. The notice to the commission shall be in the form of an application to amend the existing CFA and shall contain the information described in subsection (e) of this section

(3) Expansion of Service Area Footprint. Changes to the description of the existing service area footprint shall be accomplished by filing an application to amend the existing CFA with the commission prior to any such change.

(4) Name Changes. The holder of the CFA may request commission approval to add, delete, or change the name(s) on the CFA by filing with the commission an application to amend its CFA.

(h) Reporting Requirements.

(1) All CFA holders shall notify the commission of changes in company contact information within 14 business days of any such change.

(2) Every CFA holder shall file with this commission a copy of any order or ruling issued by a court of competent jurisdiction that either modifies or revokes its CFA or makes it ineligible to hold a CFA within 14 business days of the issuance of such order or ruling.

(i) Records requirements. A franchise holder shall maintain a copy of records required by applicable federal or state laws and regulations for a period of not less than 24 months. Upon commission staff request, the franchise holder shall provide an accurate and complete copy of any such records no later than 10 business days after the date of such request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2006.

TRD-200601515
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §66.10

The State Board of Education (SBOE) proposes an amendment to §66.10, concerning procedures governing violations of statutes and administrative penalties relating to the state adoption and distribution of instructional materials. The rule establishes procedures addressing complaints; administrative and first- and second-year penalties; categories of factual errors; penalties for failure to correct factual errors, for selling textbooks with factual errors, and for failure to deliver adopted instructional materials in a timely manner; SBOE discretion regarding penalties; and payment of fines. The proposed amendment would clarify existing provisions and add language to address failure to deliver teacher components and failure to maintain websites in state-adopted products.

In subsection (c), the proposed amendment would establish penalties for errors identified after instructional materials are distributed to schools that are comparable to the penalties assessed for errors identified prior to distribution. This proposed amendment would also remove the $3,000 penalty cap for errors and clarify that factual errors submitted by a publisher should not be considered "editorial corrections."

In subsection (f), the proposed amendment would clarify that the second-year penalties provision includes reference to the first-year penalties provisions described in subsection (e).

In subsection (g), a change recommended by the Texas Coordinators Association of Texas (TCAT) would clarify that back-order penalties include penalties for failure to deliver adopted teacher components in a timely manner or in the quantities which the school district or open-enrollment charter school is eligible to receive.

In subsection (h), language would be removed to clarify that it is impossible to determine whether a publisher "knowingly" sold textbooks with factual errors.

New subsection (i) would be added and subsequent subsections relettered accordingly. New subsection (i) would address penalties for failure to maintain websites in state-adopted products. In recent years, a number of Internet-based programs have been adopted. In most cases, the publisher manages web pages used for the Texas Essential Knowledge and Skills (TEKS) coverage. In the 2003 adoption, however, the board determined that publishers could cover TEKS by providing a link to another web page whether or not it was managed by the publisher. New subsection (i) would require that the publisher be responsible for ensuring that the web page used for TEKS coverage is available throughout the contract period.

Susan Barnes, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state government as a result of enforcing or administering the amendment. The proposed amendment to §66.10(i) creates new penalties for publishers who fail to maintain websites in state-adopted products. Historically, fines are paid by the issuance of credit to the Texas Education Agency (for instructional materials) in the amount of the penalty. It is not possible to determine the frequency and amount of penalties that will be incurred; however, payment of fines will result in an overall cost savings to the state. There will be no fiscal implications for local government.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be a more up-to-date rule with changes that can improve the textbook adoption and distribution process. There will be no effect on small businesses. There is anticipated economic cost to persons who are required to comply with the amendment. Adoption of the proposed amendment to §66.10(i) creates potential costs to publishers of instructional materials.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by TEC, Chapter 31; and under TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The proposed amendment implements the Texas Education Code, §7.102(c) and Chapter 31.

§66.10. Procedures Governing Violations of Statutes--Administrative Penalties.

(a) - (b) (No change.)

(c) Penalties for failure to correct factual errors.

(1) - (2) (No change.)

(3) A penalty may be assessed for failure to correct a factual error identified in the list of [~~editorial~~] corrections submitted by a publisher under §66.54(g) of this title (relating to Samples), [~~or~~] for failure to correct a factual error identified in the report of the commissioner of education under §66.63(d) of this title (relating to Report of the Commissioner of Education) and required by the SBOE, or for any errors that are identified after the textbooks have been distributed to school districts and open-enrollment charter schools. The publisher

shall provide an errata sheet approved by the commissioner of education with each teacher component of an adopted title.

~~[(4) A penalty not to exceed $3,000 may be assessed for each factual error identified after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.]~~

(d) - (e) (No change.)

(f) Second-year penalties. The base and per-book penalties shall be assessed as follows if a publisher, after being penalized for failure to correct factual errors described in subsections (c) - (e) [~~and (d)~~] of this section, repeats the violation in the subsequent adoption.

(1) - (3) (No change.)

(g) Penalties for failure to deliver adopted instructional materials, including teacher components, in a timely manner or in the quantities the school district or open-enrollment charter school is eligible to receive. The SBOE may assess [~~administrative~~] penalties as allowed by law against publishers who fail to deliver adopted instructional materials, including teacher components specified by §66.51(a)(3) of this title (relating to Instructional Materials Purchased by the State), in accordance with provisions in the contracts.

(h) Penalties for selling textbooks with factual errors. The SBOE may assess administrative penalties in accordance with the Texas Education Code, §31.151, against a seller of textbooks who [~~knowingly~~] sells textbooks with factual errors.

(i) Penalties for failure to maintain websites in state-adopted products. The SBOE may assess administrative penalties against a publisher who fails to maintain a website or provide a suitable alternative for conveying the information in the website, or who otherwise fails to meet the requirements of this subsection. Where applicable, the publisher shall monitor, update, and maintain any in-house and third party electronic, web-based, or online products furnished as part of the instructional materials specified in State of Texas Official Publisher Contract for the period determined by the SBOE. If, at any time during the contract period, the commissioner of education determines that electronic, web-based, or online instructional materials furnished and supplied under the terms of a contract have faulty manufacturing characteristics or display dated or inferior information, the instructional materials or information shall be replaced with complying materials or information by the publishers without cost to the state. The publisher further agrees that electronic, web-based or online instructional materials listed in a State of Texas Official Publishers Contract will not be altered in any way that would remove content from the curriculum. The publisher will not allow advertising of any type to be placed in or associated with the materials. The publisher will not add any Internet links to the materials without the approval of the commissioner of education, will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites, and will not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses. This section applies only to a website that is a component used to address Texas Essential Knowledge and Skills as part of a state-adopted product.

(j) [~~(i)~~] State Board of Education discretion regarding penalties. The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.

(k) [~~(j)~~] Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency (TEA) in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, TEA is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine for failure to deliver adopted instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted instructional materials in a timely manner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2006.

TRD-200601581
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 475-1497

SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §§66.27, 66.28, 66.33, 66.36, 66.48, 66.51, 66.54, 66.60, 66.66, 66.69, 66.75

The State Board of Education (SBOE) proposes amendments to §§66.27, 66.28, 66.33, 66.36, 66.48, 66.51, 66.54, 66.60, 66.66, 66.69, and 66.75, concerning the state adoption of instructional materials. The rules establish procedures addressing the proclamation, public notice, and schedule for adopting instructional materials; adoption by reference; appointment, duties, and conduct of state review panels; statement of intent to bid instructional materials, instructional materials purchased by the state; samples; public comment on instructional materials; consideration and adoption of instructional materials by the SBOE; ancillary materials; and revised editions. The proposed amendments would update and clarify these rules, as follows.

In §66.27, Proclamation, Public Notice, and Schedule for Adopting Instructional Materials, the proposed amendment would modify subsection (a) to clarify that publishers are not required to register to receive notice of the proclamation. Subsection (c) would also be revised to allow use of the Internet for notification of proclamations and for soliciting input from the publishing industry concerning maximum costs.

In §66.28, Adoption by Reference, the proposed amendment would update reference to current proclamations. To comply with Texas Education Code (TEC), §28.002(c), each year the SBOE adopts by reference the Texas Essential Knowledge and Skills (TEKS) that are to be used for evaluating instructional materials submitted for consideration under a proclamation. The proposed amendment would remove the reference to TEKS in Proclamations 2001 and 2002 since the products were reviewed and adopted in 2003 and 2004, respectively. The proposed amendment would add the reference to the TEKS in Proclamations 2004 and 2005 that will be used to evaluate new products submitted in 2006 and 2007. The proposed amendment would also add reference to the Texas Education Agency (TEA) website for viewing proclamations.

In §66.33, State Review Panels: Appointment, the proposed amendment would add language to subsection (a) requiring that

the commissioner of education ensure that each state textbook review panel includes academic experts in the content area for which the new instructional materials have been submitted. This proposed amendment considers a recommendation made by the Sunset Advisory Commission in 2005 and subsequent clarification by the SBOE. Academic expert was defined so as to include not only university professors but also classroom teachers with strong academic backgrounds.

In §66.36, State Review Panels: Duties and Conduct, the proposed amendment would add language to subsection (a) to include clarification that panel members must use the SBOE-approved definition of TEKS coverage included in the SBOE-approved question and answer document that becomes a formal part of the review and adoption process.

The proposed amendment to 19 TAC §66.36 is proposed in the context of a pending Attorney General's opinion request (RQ-0430-GA). The SBOE will be guided by the resulting Attorney General's opinion in adopting a final rule.

In §66.48, Statement of Intent To Bid Instructional Materials, the proposed amendment would add language to subsection (a) to require publishers to provide preliminary price information at the time statements of intent to bid are submitted. This proposed amendment would provide publishers and staff additional time to review and compile pricing information and resolve issues on pricing and maximum costs that publishers might have.

In §66.51, Instructional Materials Purchased by the State, the proposed amendment would delete language in subsection (a)(2) that prohibits a publisher from submitting a final bid price for the program that exceeds the preliminary price. The preliminary price would be submitted with the state of intent to bid information. Subsection (a)(5) would be modified to coincide with the proposal that publishers submit price information with the statement of intent to bid rather than with the official samples. Subsection (a)(6) would be modified to clarify that individual component prices are replacement costs for school districts and are not bid prices that should be offered by the publishers.

Subsection (a)(8) would be modified, as recommended by the Texas Coordinators Association of Texas (TCAT), to require publishers to mark their nonconsumable products to indicate that they are nonconsumable. In addition, the revision to subsection (a)(8) would eliminate the requirement that the publisher's price for consumable material not exceed the state maximum cost. This requirement is inconsistent with state law that allows publishers to exceed the maximum cost with school districts paying the difference.

Subsection (a)(9) would be added to provide clarification to publishers as to when the state would pay for consumable materials and when the consumable materials must be provided to school districts for the life of the contract. Currently, some publishers do not understand that consumable materials must be provided to districts each year for new students. If the state calls for consumables, the state budgets for this and pays for them each year. Some publishers provide consumables for one year, even though the state does not call for them and then expect the districts to pay for them in the following years. Publishers that desire year-to-year flexibility in offering any materials other than those specifically called for should offer these as ancillary or "free with order" materials.

Subsection (a)(11) would be added to include the Texas Sunset Commission finding that the current "textbook process does not maximize the use of the State's textbook funds." Currently, the state pays up to the approved maximum cost for all adopted textbooks, including those that do not fully cover the TEKS. This proposed change would enable the state to save funds by reducing the maximum cost that could be paid for nonconforming textbooks.

In §66.54, Samples, the proposed amendment would change language in subsection (a) to generalize the requirement for printed samples to be complete as to content so as to extend the requirement to electronic media. The current rule refers to publishers' submissions of instructional materials with "finished-format binding." The proposed amendment would address Internet-based or electronic products and require that programs of these types be submitted in final form and completely functional.

Subsections (d) and (h) would be modified to reduce the number of samples to be filed with the agency prior to and after state adoption. Subsection (d) would also eliminate the requirement that preliminary price information be submitted with the sample. This change would coincide with the proposal that price information be submitted with the statement of intent to bid.

Subsection (e) would be revised to address delivery of samples for review by state review panels. Most samples are now submitted by publishers directly to the meeting location. The proposed amendment would also address specifications regarding correlations, supplementary materials, and the definition of instructional materials. Correlations include location of TEKS in products being reviewed and are used primarily as resources for staff. Deleting "supplementary materials" is consistent with the practice of allowing a wide range of materials to be submitted for adoption.

In §66.60, Public Comment on Instructional Materials, the proposed amendment would provide for public hearing testimony by non-Texas residents with priority given to Texas residents. In 2003, a number of requests to speak at public hearings were submitted by non-Texas residents. The SBOE proposes to allow residents of other states to participate in public hearings instead of continuing the current practice of allowing only residents of Texas to provide official testimony.

In §66.66, Consideration and Adoption of Instructional Materials by the State Board of Education, the proposed amendment would revise subsection (a) to eliminate the need for publishers to provide proof of authority to do business in Texas. This document is no longer required for participation in the adoption process. In subsection (c), the proposed amendment would clarify that each student expectation in the TEKS must be addressed in order for a program to be considered conforming. Current rule refers to performance descriptions rather than student expectations.

The proposed amendment to 19 TAC §66.66 is proposed in the context of a pending Attorney General's opinion request (RQ-0430-GA). The SBOE will be guided by the resulting Attorney General's opinion in adopting a final rule.

In §66.69, Ancillary Materials, the proposed amendment would add a definition of ancillary materials to ensure that all publishers have a common understanding of what constitutes an ancillary. Currently, different publishers use the term in different ways. Also for clarification, language would be added to reference open-enrollment charter schools along with reference to school districts.

In §66.75, the proposed amendment would change the title to "Revisions, Updates, and Substitutions" from "Revised Editions." Subsections (a) and (c) would be modified to add language to address electronic textbooks and Internet products. Ease of revision should not exempt electronic textbooks and Internet products, as instructional materials, from equal compliance with this rule. When school districts upgrade to a newer version of a computer operating system and the publisher has a corresponding software product available, it should be made available without regard to the one-year-policy. A new subsection (d) would be added to include the provision that publishers must certify in writing that the new materials meets the applicable TEKS and is free from factual errors. Relettered subsection (e) would be modified to include reference to revisions and updates and well as substitution requests. Relettered subsection (f) would be modified to specify the requirement for SBOE approval of all requests for revisions, updates, or substitutions involving content prior to their introduction into state-adopted instructional materials. The proposed amendment would also establish that the SBOE may assess penalties against publishers that fail to obtain the necessary prior approval. The SBOE has statutory responsibility to monitor all revisions in all approved instructional materials for conformity to the TEKS and freedom from factual errors.

New subsection (g) would be added to specify that publishers must request approval from the commissioner of education for electronic design changes and/or updates that do not include changes to TEKS coverage or new content. It would be more efficient if technological changes such as performance (programming upgrades), increased speed, user friendly design features (navigation, improved functionality), and technology upgrades (maintenance, changes in operating systems) are approved by the commissioner. The time needed for SBOE review and approval for changes not related to content could delay classroom use of the electronic instructional materials already adopted.

New subsection (h) would be added, as recommended by the TCAT, to address the availability of the previous version of state adopted textbooks for school districts that choose to continue using the previous version.

New subsections (i) - (m) would be added to address alternate formats of SBOE-approved products that may be provided by publishers. If a school district prefers a newer version of a program or an alternative format for the same content, the product should be available without further SBOE review. If the TEA agrees that the alternate format includes the same SBOE-approved content, school districts would be made aware that it is available and publishers would work with districts to supply the appropriate format.

Susan Barnes, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendments are in effect there will be fiscal implications for state government as a result of enforcing or administering the amendments. The proposed amendment to §66.51(a)(11) presents additional potential cost savings to the state by basing the maximum cost of nonconforming instructional materials on the percentage of TEKS elements contained therein. Because it is not possible to project how many publishers will submit nonconforming materials or what percentage would be applied, it is impossible to estimate the savings. There will be no fiscal implications for local government.

Dr. Barnes has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be a more up-to-date rule with changes that can improve the textbook adoption and distribution process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by TEC, Chapter 31; and under TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendment implements the Texas Education Code, §7.102(c) and Chapter 31.

§66.27. Proclamation, Public Notice, and Schedule for Adopting Instructional Materials.

(a) The State Board of Education (SBOE) shall issue a proclamation calling for new instructional materials according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE. The proclamation shall serve as notice to all [~~registered~~] publishers and to the public that bids to furnish new materials to the state are being invited. The proclamation shall be issued at least 24 months before the scheduled adoption of the new instructional materials by the SBOE.

(b) (No change.)

(c) A draft copy of the proclamation shall be provided to each member of the SBOE and to designated representatives of the publishing industry to solicit input on maximum costs before the SBOE considers the proclamation. In addition, the Texas Education Agency (TEA) shall solicit input from the publishing industry [~~hold a public meeting~~] regarding the draft proclamation, including maximum costs, [~~with representatives of the publishing industry 60-90 days~~] prior to the scheduled adoption [~~of the proclamation~~] by the SBOE. The TEA may use the Internet to facilitate this process. Any revisions recommended as a result of input from [~~the meeting with~~] publishers shall be presented to the SBOE along with the subsequent draft of the proclamation.

(d) (No change.)

§66.28. Adoption by Reference.

(a) The sections titled "Content Requirements" in the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2004. A copy of the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* can be accessed from the Texas Education Agency official website.

(b) The sections titled "Content Requirements" in the *Proclamation 2005 of the State Board of Education Advertising for Bids on*

Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2005. A copy of the *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.

[(a) The sections titled "Content Requirements" in the 2001 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2001. A copy of the 2001 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.]

[(b) The sections titled "Content Requirements" in the 2002 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2002. A copy of the 2002 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.]

§66.33. State Review Panels: Appointment.

(a) The commissioner of education shall: determine the number of review panels needed to review instructional materials under consideration for adoption, determine the number of persons to serve on each panel, and determine the criteria for selecting panel members. Each appointment to a state review panel shall be made by the commissioner of education with the advice and consent of the State Board of Education (SBOE) member whose district is to be represented. The commissioner of education shall make appointments to state textbook review panels that ensure participation by academic experts in each subject area for which instructional materials are being considered. The term academic expert includes not only university professors but also public school teachers with a strong background in a particular discipline.

(b) - (d) (No change.)

§66.36. State Review Panels: Duties and Conduct.

(a) The duties of each member of a state review panel are to:

(1) evaluate all instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered. Panel members will use State Board of Education-approved procedures for evaluating coverage of the essential knowledge and skills;

(2) - (4) (No change.)

(b) - (d) (No change.)

(e) Members of each state review panel may be required to be present at the State Board of Education [(SBOE)] meeting at which instructional materials are adopted.

§66.48. Statement of Intent to [To] Bid Instructional Materials.

(a) Each publisher who intends to offer instructional materials for adoption shall submit a statement of intent to bid and preliminary price information on or before the date specified in the schedule for the adoption process. The statement of intent with preliminary price information shall be accompanied by publisher's data submitted in a form approved by the commissioner of education.

(b) - (e) (No change.)

§66.51. Instructional Materials Purchased by the State.

(a) Instructional materials offered for adoption by the State Board of Education (SBOE).

(1) (No change.)

(2) The official bid price of an instructional material submission may [shall not] exceed the price included with the statement of intent to bid [official sample] filed under §66.48 of this title (relating to Statement of Intent to Bid Instructional Materials) [§66.54 of this title (relating to Samples)].

(3) - (4) (No change.)

(5) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with statement of intent to bid [official samples] and in the official bid.

(6) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period. (Individual component prices are listed to show school districts the replacement costs of components and not to reflect publisher's bid prices for these components.)

(7) (No change.)

(8) Instructional materials submitted for adoption shall be self-sufficient for the period of adoption. Nonconsumable components shall be clearly marked as nonconsumable and replaced by the publisher during the warranty period. Consumable materials included in a student or teacher component of a submission shall be clearly marked as consumable. The cost of such consumables to the state for the entire contract period may [shall not] exceed the maximum cost established in the proclamation. School districts may be required to pay the difference between the state maximum cost and the actual cost of the materials.

(9) Student packages of instructional materials offered for adoption shall not include consumable components unless the consumable material is specifically called for by the TEA at a specified maximum cost.

(10) [(9)] On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and skills required by the proclamation. Correlations shall be submitted in a format approved by the commissioner of education.

(11) The SBOE shall reduce the approved maximum cost for each nonconforming instructional material. The reduced maximum cost for each adopted nonconforming instructional material shall be equal to the original maximum cost for that instructional material times a certain percentage. This percentage shall be the same as the percentage of elements of the essential knowledge and skills covered by the instructional material and that was used by the SBOE to determine whether the instructional material should be designated as conforming, nonconforming, or rejected per the Texas Education Code. Each performance description shall count as an independent element of the

essential knowledge and skills of the subject. For those courses where a student expectation is not identified, the knowledge and skill will replace the student expectation to determine the percentage of student expectations addressed. The reduced maximum cost for nonconforming instructional materials will apply to both foundation and enrichment courses. For nonconforming instructional materials, the state shall be responsible for payment to the publisher in an amount only equal to the reduced maximum cost. A school district ordering nonconforming instructional materials is responsible for the portion of the cost that exceeds the reduced state maximum cost.

(b) (No change.)

§66.54. Samples.

(a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and representative of finished[-]format [~~binding~~]. Electronic textbooks submitted for adoption, including Internet-based products, must be representative of the final product and completely functional.

(b) - (c) (No change.)

(d) Two [~~Three~~] official sample copies of each student and teacher component of an instructional materials submission shall be filed with the TEA on or before the date specified in the schedule for the adoption process. The TEA may request additional samples if they are needed. [~~Price information required by the commissioner of education shall be included in each sample.~~] In addition, the publisher shall provide a complete description of all items included in a student and teacher component of an instructional materials submission.

(e) One sample copy of each student and teacher component of an instructional materials submission shall be filed with each member of the appropriate state review panel in accordance with instructions provided by the TEA [~~on or before the date specified in the schedule for the adoption process~~]. To ensure that the evaluations of state review panel members are limited to student and teacher components submitted for adoption, publishers shall not provide correlations, ancillary materials, [~~supplementary materials,~~] or descriptions of ancillary [~~or supplementary~~] materials to state review panel members. Texas Education Code, §31.002(3), defines a textbook as a book, a system of instructional materials, a combination of a book and supplementary instructional materials that conveys information to the student or otherwise contributes to the learning process, or an electronic textbook.

(f) - (g) (No change.)

(h) Two [~~Three~~] complete sample copies of each student and teacher component of adopted instructional materials that incorporate all corrections required by the SBOE shall be filed with the commissioner of education on or before the date specified in the schedule for the adoption process. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections required by the commissioner of education and SBOE have been made. Corrected samples shall be identical to materials that will be provided to school districts after purchase.

(i) (No change.)

§66.60. Public Comment on Instructional Materials.

(a) (No change.)

(b) Public hearing before the SBOE. On a date specified in the schedule for the adoption process, the SBOE shall hold a hearing on instructional materials submitted for adoption that may, at the discretion of the SBOE chair, be designated an official meeting of the SBOE.

(1) Testimony at the hearing shall be accepted from Texas residents and non-residents with priority given to Texas residents [~~only from residents of Texas~~]. Copies of speeches made at the hearing may be distributed to SBOE members. No other written material may be distributed during the hearings. Persons who wish to testify must notify the commissioner of education on or before the date specified in the schedule for the adoption process. The notice must identify the subject areas and titles about which testimony will be presented. The SBOE may limit the time available for each person to testify.

(2) - (4) (No change.)

(c) Public comment on instructional materials not adopted on schedule. Public comment on instructional materials not adopted by the SBOE on the date specified in the schedule for the adoption process shall be accepted according to the SBOE Operating Rules, §2.10 (relating to [~~concerning~~] Public Testimony).

§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.

(a) Publishers shall file three copies of the official bid form [~~the following documents~~] with the commissioner of education according to the schedule for the adoption process. [~~:~~]

[~~(1) three copies of the official bid form; and~~]

[~~(2) appropriate proof of authority to do business in the State of Texas.~~]

(b) (No change.)

(c) By a vote of a majority of the SBOE, the SBOE shall adopt a list of conforming instructional materials and a list of nonconforming instructional materials under the Texas Education Code, §31.023 and §31.024. Instructional materials may be rejected for:

(1) failure to meet essential knowledge and skills specified in the proclamation. In determining the percentage of elements of the essential knowledge and skill covered by instructional materials, each student expectation [~~performance description~~] shall count as an independent element of the essential knowledge and skills of the subject;

(2) - (4) (No change.)

(d) (No change.)

§66.69. Ancillary Materials.

"Ancillary materials" are defined by the Texas Education Agency (TEA) as materials that are not listed on the publisher's intent to bid statement but which the publisher plans to provide to districts and open-enrollment charter schools free with their order. A publisher of adopted instructional materials shall provide any ancillary item free of charge or at the same price discount to the same extent that the publisher provides the item free of charge or at a price discount to any state, public school, or school district in the United States. Free or discounted price ancillary items will be distributed equitably to all school districts and open-enrollment [~~open enrollment~~] charter schools regardless of size. The title of each ancillary item that a publisher will make available to school districts and open-enrollment charter schools at no charge and the ratio at which each item shall be supplied shall be filed with the TEA [~~Texas Education Agency (TEA)~~] according to the schedule contained in the proclamation. A publisher must notify TEA of any ancillaries provided to school districts and open-enrollment charter schools that are not listed with TEA. All packages of ancillary materials shipped to school districts and open-enrollment charter schools shall be labeled, "Ancillary Materials--Not Reviewed by the State Board of Education."

§66.75. Revisions, Updates, and Substitutions [~~Revised Editions~~].

(a) A publisher may submit a request to the commissioner of education for approval to substitute a revision, an update, or a later edition of state-adopted instructional materials. A publisher requesting a substitution shall provide the request in writing, along with two

copies of the revision, update, or later edition, and one copy of the corresponding state-adopted instructional material. This section includes electronic textbooks and Internet products for which all users receive the same updates or revisions.

(b) (No change.)

(c) Requests [~~Except for electronic instructional materials, requests~~] for approval of revisions, updates, or substitutions shall not be approved during the first year of the original contract unless the commissioner of education determines that changes in technology, curriculum, or other reasons warrant the revisions, updates, or substitutions.

(d) Publishers submitting requests for approval of revisions, updates, or substitutions must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.

(e) [~~(d)~~] Responses from the commissioner of education to revisions, updates, or substitution requests shall be provided within 30 days after receipt of the request.

(f) [~~(e)~~] All requests [~~Requests~~] for revisions, updates, or substitutions involving content in [~~of~~] state-adopted instructional materials [~~with revised editions~~] must be approved by the State Board of Education (SBOE) prior to their introduction into state-adopted instructional materials. The SBOE may assess penalties as allowed by law against publishers who fail to obtain approval for revisions, updates, or substitutions to content in state-adopted instructional materials prior to delivery of the materials to school districts. [~~if the revised edition differs in its coverage of the Texas essential knowledge and skills from the original submission adopted by the SBOE.~~]

(g) Publishers shall request approval from the commissioner of education for electronic design changes and/or updates that improve performance, design, and technology capabilities that enhance the operation and usage for students and teachers but do not include changes to Texas essential knowledge and skills coverage or new content.

(h) Publishers must agree to supply the previous version of state-adopted textbooks to school districts that choose to continue using the previous version during the duration of the original contract. This subsection does not apply to online instructional materials.

(i) A publisher of instructional materials may provide alternative formats for use by school districts if:

(1) the content is identical to SBOE-approved content;

(2) the alternative formats include the identical revisions and updates as the original product; and

(3) the cost to the state and school is equal to or less than the cost of the original product.

(j) Alternative formats may be developed and introduced at a time when the subject or grade level is not scheduled in the cycle to be considered for at least two years, in conformance with the procedures for adoption of other state-adopted materials.

(k) Publishers must notify the commissioner of education in writing if they are providing SBOE-approved products in alternative formats.

(l) Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of these orders.

(m) The commissioner of education may add alternative formats of SBOE-approved products to the list of available products disseminated to school districts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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SUBCHAPTER C. LOCAL OPERATIONS

19 TAC §§66.104, 66.107, 66.110

The State Board of Education (SBOE) proposes amendments to §66.104 and §66.107 and new §66.110, concerning local operations relating to the state adoption and distribution of instructional materials. The proposed new rule would establish provisions relating to a pilot project created by Senate Bill (SB) 151, 79th Texas Legislature, Regular Session, 2005. The existing rules establish procedures addressing the selection of instructional materials by school districts and local accountability. The proposed amendments would update these rules, as follows.

In §66.104, Selection of Instructional Materials by School Districts, the proposed amendment would revise subsection (k) to delete reference to the state textbook depository. The Electronic Materials and Textbook ordering system, *EMAT Online*, will allow school districts to ship surplus instructional materials to other school districts.

In §66.107, Local Accountability, the proposed amendment would modify subsections (c) and (f) to reflect closure of the state textbook depository formerly used to redistribute surplus textbooks and the development of a statewide system for distributing surplus textbooks among school districts. Language would be added in subsection (c) to define surplus. Language would be added in subsection (d), as recommended by the TCAT, to emphasize the need to count students actually working at a particular grade level rather than relying solely on PEIMS counts. A cross reference correction would be made in subsection (f). New subsection (h) would be added to implement House Bill (HB) 2072, enacted by the 78th Texas Legislature, 2003. HB 2072 stipulates that school districts shall not require teachers to pay for lost instructional materials.

New §66.110, Pilot Project for Certain Students Enrolled in Courses for Concurrent High School and College Credit, would be added to reflect the requirements of SB 151, 79th Texas Legislature, Regular Session, 2005. The bill, which became effective June 18, 2005, creates a pilot program of dual credit in several junior colleges and waives tuition and fees for educationally disadvantaged high school students. It also entitles the students to free textbooks for the dual credit courses. The bill makes implementation conditional upon sufficient general revenue appropriations in an amount corresponding with the waived tuition and fees.

If funds are appropriated in the future, the proposed new rule would establish provisions relating to student eligibility and entitlement; the SBOE role in setting aside money for textbooks; and school district responsibilities for making payments, maintaining inventory, and reporting enrollment.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendments and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments or new section.

Dr. Barnes has determined that for each year of the first five years the amendments and new section are in effect the public benefit anticipated as a result of enforcing the amendments and new section will be a more up-to-date rule with changes that can improve the textbook adoption and distribution process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments or new section.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments and/or new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments and new section are proposed under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by TEC, Chapter 31; under TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks; and under TEC, §31.031, which requires the SBOE to adopt rules in accordance with which a school district shall pay the costs of textbooks for students enrolled in junior college courses for concurrent high school and higher education academic credit under the pilot project.

The amendments and new section implement the Texas Education Code, §7.102(c) and Chapter 31.

§66.104. Selection of Instructional Materials by School Districts.

(a) Each local board of trustees of a school district or governing body of an open-enrollment charter school shall adopt a policy for selecting instructional materials. Final selections must be recorded in the minutes of the board of trustees or governing body.

(b) If instructional materials priced above the maximum cost to the state established in the proclamation are selected by a school district or open-enrollment charter school, the school district or open-enrollment charter school is responsible for paying to the publisher the portion of the cost above the state maximum.

(c) If instructional materials for subjects in the enrichment curriculum that are not on the conforming or nonconforming lists adopted by the State Board of Education (SBOE) are selected by a school district or open-enrollment charter school, the state shall be responsible for paying the district an amount equal to the lesser of:

(1) 70% of the cost to the district of the instructional materials. The applicable quota for adopted materials in the subject shall be the basis for determining instructional materials needed by the district; or

(2) 70% of the maximum cost to the state established for the subject. The applicable quota for adopted materials in the subject shall be the basis for determining instructional materials needed by the district.

(d) A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects is responsible for the portion of the cost of the materials not eligible for payment by the state under subsection (c) of this section. The minutes of the board of trustees or governing body meeting at which such a selection is ratified shall reflect the agreement of the school district or open-enrollment charter school to bear responsibility for the portion of the cost not eligible for payment by the state. A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects also bears responsibility for providing braille and/or large type versions of the non-adopted instructional materials.

(e) Funds paid by the state under subsection (c) of this section shall be used only for purchasing the non-adopted instructional materials selected and ratified by the board of trustees or governing body.

(f) Non-adopted instructional materials selected and purchased under subsection (c) of this section shall be used by the school district or open-enrollment charter school during the contract period for conforming and nonconforming instructional materials adopted by the SBOE in the subject area.

(g) A report listing instructional materials selected for use in a school district or open-enrollment charter school shall be transmitted to the Texas Education Agency (TEA) no later than April 1 each year.

(h) Only instructional materials ratified by the board of trustees or governing body shall be furnished by the state for use in any school district or open-enrollment charter school. Selections certified to the TEA shall be final and, therefore, shall not be subject to reconsideration during the original contract period or readoption contract periods covering the instructional materials selected.

(i) Except as otherwise provided by statute, requisitions submitted before the first day of school shall be approved based on the maximum number of students enrolled in the district or open-enrollment charter school during the previous school year and/or registered to attend the district during the next school year. Requisitions submitted after the first day of school shall be approved based on the actual number of students enrolled in the district when the requisition is submitted. If two or more titles are selected in a subject, requisitions may be made for a combined total of the selected titles.

(j) Instructional materials requisitioned by, and delivered to, a school district or an open-enrollment charter school shall be continued in use during the contract period or periods of the materials. A school district may not return copies of one title to secure copies of another title in the same subject.

(k) If a school district or open-enrollment charter school does not have a sufficient number of copies of a textbook used by the district or school for use during the following school year, and a sufficient number of additional copies will not be available from the publisher's depository or the publisher within ten business days prior to the opening day of school, the school district or school is entitled to be reimbursed from the state textbook fund at a rate not to exceed the actual cost of the used textbook, or the state maximum cost, whichever is less, for the purchase of a sufficient number of used adopted textbooks. [~~:~~]

[~~(1) be reimbursed from the state textbook fund at a rate not to exceed the actual cost of the used textbooks, or the state maximum cost, whichever is less, for the purchase of a sufficient number of used adopted textbooks; or~~]

[~~(2) return currently used textbooks to the commissioner of education in exchange for sufficient copies, if available from the state textbook depository, of other textbooks on the conforming or nonconforming list to be used during the following school year.~~]

(l) In making a requisition, a school district or open-enrollment charter school may requisition textbooks on the conforming and nonconforming list for grades above the grade level in which the student is enrolled, except that the total quantity of textbooks requisitioned may not exceed a school district's eligibility quota for that subject.

(m) Adopted instructional materials shall be supplied to a pupil in special education classes as appropriate to the level of the pupil's ability and without regard to the grade for which the instructional material is adopted or the grade in which the pupil is enrolled.

(n) A school district or open-enrollment charter school may order replacements for textbooks that have been lost or damaged directly from the textbook depository or the textbook publisher or manufacturer if the textbook publisher or manufacturer does not have a designated textbook depository in this state, in accordance with §66.78(a) of this title (relating to Delivery of Adopted Instructional Materials).

(o) School districts or open-enrollment charter schools shall not be reimbursed from state funds for expenses incurred in local handling of textbooks.

(p) Selection and use of ancillary materials provided by publishers under §66.69 of this title (relating to Ancillary Materials) is at the discretion of each local board of trustees or governing body.

§66.107. Local Accountability.

(a) Each school district or open-enrollment charter school shall conduct an annual physical inventory of all currently adopted instructional materials that have been requisitioned by, and delivered to, the district. The results of the inventory shall be recorded in the district's files. Reimbursement and/or replacement shall be made for all instructional materials determined to be lost.

(b) Each textbook, other than an electronic textbook, must be covered by the student under the direction of the teacher.

(c) After the beginning of every school year, each school district or open-enrollment charter school shall determine if it has surplus instructional materials for any subject area/grade level, based on its current enrollment for the subject area/grade level. In accordance with the Educational Materials and Textbooks (EMAT) online ordering system, surplus is defined as follows. For courses that use textbooks that are in the first year of adoption, any textbook in excess of 110% of enrollment shall be considered surplus. For courses that use textbooks that are in the second or later years of adoption, any textbook in excess of 120% of enrollment shall be considered surplus. Overages that exceed these definitions should be entered into the EMAT Online Adjust Surplus Screen, except that instructional materials that are needed for the following school year are not considered surplus and should not be entered into the Adjust Surplus Screen. Instructional materials determined by the school district or open-enrollment charter school to be surplus-to-quota shall be reported to the Texas Education Agency (TEA) by October 1 of each year [~~returned to the State Textbook Depository~~] in accordance with instructions provided by the TEA [~~Texas Education Agency~~]. A school district or open-enrollment charter school is entitled to retain surplus-to-quota instructional materials only when data approved by the TEA [~~Texas Education Agency~~] indicate that students will be enrolled in the subject and a need for the surplus-to-quota instructional materials exists.

(d) When placing orders for instructional materials, school districts and open-enrollment charter schools shall report enrollments as follows:

(1) Annual orders for instructional materials. Enrollments shall be reported based on the maximum number of students enrolled in the district or open-enrollment charter school during the previous school year and/or registered to attend the district during the next school year; and

(2) Supplemental orders for instructional materials. Enrollments shall be reported based on the actual number of students enrolled in the district when the order is submitted, adjusted for students reported as working above or below grade level.

(e) The TEA [~~Texas Education Agency~~] assumes that enrollments reported by a school district or open-enrollment charter school at the time an order for instructional materials is placed are accurate.

(f) A school district or open-enrollment charter school that orders instructional materials in excess of its eligibility by reporting enrollments above enrollments described in subsection (d) [~~(c)~~](1) and (2) of this section enters into a contract with the state to purchase the instructional materials supplied that exceed the school district or open-enrollment charter school's eligibility for the subject area/grade level. A school district or open-enrollment charter school may cancel the contract to purchase instructional materials supplied in excess of its eligibility by immediately notifying the TEA of the surplus and posting the surplus in accordance with instructions provided by the TEA. [~~returning the excess instructional materials to the State Textbook Depository.~~] If prior approval is received, surplus [~~excess~~] instructional materials may [~~also~~] be returned to the publisher's approved depository or placed into statewide surplus inventory in accordance with instructions from the TEA. A school district or open-enrollment charter school that fails to notify the TEA of surplus [~~retains excess~~] instructional materials for more than six months after the beginning of the school year shall reimburse the state at the full price for the surplus [~~excess~~] instructional materials.

(g) All textbooks must be turned in at the end of the school year or when the student withdraws from school.

(h) The board of trustees of a school district may not require an employee of the district to pay for a textbook or instructional technology that is stolen, misplaced, or not returned by a student.

§66.110. Pilot Project for Certain Students Enrolled in Courses for Concurrent High School and College Credit.

(a) A student in Grade 11 or 12 who attends an institution of higher education and is enrolled in a dual credit course for which the student is entitled to simultaneously receive both high school and college credit under the pilot project established in Texas Education Code (TEC), §54.2161, is entitled to a free textbook for the dual credit course.

(b) The State Board of Education (SBOE) will annually set aside out of the available school fund an amount sufficient for each school district with one or more students entitled to free textbooks under this pilot project for the following school year. In accordance with TEC, §31.021, the commissioner of education will provide an estimate of costs to the SBOE.

(c) As provided in TEC, §54.2161(c) and §31.031(b)-(c), school districts will pay the costs of the textbooks for students participating in this pilot project. If an institution of higher education (IHE) provides a textbook to a student under TEC, §54.2161, the school district shall reimburse the IHE for the cost of the textbook. The amount of reimbursement applies to the actual textbook cost or state maximum cost, whichever is lower. The reimbursement amount is calculated at one textbook per student per course and does not include additional textbooks, workbooks, taxes, or teacher material.

(d) The board of trustees of the school district in which a student is enrolled is the legal custodian of a textbook provided under this pilot.

(e) A school district participating in this pilot project is required to report annually to the Texas Education Agency the enrollment in these dual credit courses. A district is also required to track and maintain an inventory of these textbooks, and students are required to return the textbooks to the district at the end of the concurrent college course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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SUBCHAPTER D. SPECIAL INSTRUCTIONAL MATERIALS

19 TAC §66.121

The State Board of Education (SBOE) proposes amendment to §66.121, concerning special instructional materials. The rule establishes procedures addressing the distribution and control of braille and large type instructional materials. The proposed amendments would update the rule and add language to make educational materials available for blind or visually impaired parents.

In subsection (e), the proposed amendment would reflect the closing of the state textbook depository and implementation of a new process for redistributing braille and large type instructional materials.

New subsection (h) would add language to make educational materials available for blind or visually impaired parents in accessible formats such as braille and large type. In September 2005, the American Council of the Blind of Texas sent the commissioner of education a resolution emphasizing that "blind or visually impaired parents want to play an integral part in their sighted children's education" and requested that the Texas Education Agency (TEA) make educational materials available for blind or visually impaired parents in accessible formats such as braille and large type. Since the mid-1990s, the TEA has provided braille versions of state adopted textbooks to blind or visually impaired parents of sighted public school students, when requested. The number of requests has been very small and there have been no problems associated with providing these materials to parents who are blind or visually impaired. Staff has determined that the requested materials can be made available without a need for additional resources.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be establishing in rule the existing policy of making available to blind or visually impaired parents the educational materials used by their sighted children. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by TEC, Chapter 31; and under TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendment implements the Texas Education Code, §7.102(c) and Chapter 31.

§66.121. Special Instructional Materials.

(a) All laws and rules applying to instructional materials provided to sighted pupils that are not in conflict with the Texas Education Code, §31.028, or this section shall apply to the distribution and control of braille and large type instructional materials.

(b) Publishers shall grant permission to the state to have adopted instructional materials transcribed into braille, large type, and audiotape without penalty or royalty.

(c) On or before the deadline specified in the schedule for the adoption process, each publisher of newly adopted instructional materials shall provide computerized files as specified in the proclamation to be used for producing braille or other versions of materials to be used by students with disabilities. All information contained in adopted instructional materials shall be included on the computerized files. Computerized files may be copied and distributed to a school district, upon request, for instructional use with a student with disabilities who requires the use of computerized instructional materials, pursuant to an individualized plan developed for the student under the Rehabilitation Act, §504; the Americans with Disabilities Act; or the Individuals with Disabilities Education Act.

(d) The state shall make suitable student instructional materials available in large type. The commissioner of education shall develop specifications for large type instructional materials and notify publishers of student instructional materials suitable for production in large type. The publisher may elect to supply the large type materials, or the commissioner of education may enter into contracts for producing large type materials.

(e) Gifts of instructional materials for educating students who are blind or visually impaired tendered by individuals, groups, or school district officials may be accepted by the State Board of Education [~~(SBOE)~~] and shall become state property and subject to the same regulations as similar items purchased with state funds. Gift materials may be shipped by Free Matter for the Blind and Visually Handicapped to the Special Textbook Redistribution Center or other location designated by the Texas Education Agency (TEA) [~~freight charges collect to the state depository~~] .

(f) Copies of adopted instructional materials in braille and large type needed by a person who is blind or visually impaired to carry out the duties of a teacher in the public schools of this state shall

be furnished without cost. The materials are to be loaned to the public school districts as long as needed and are to be returned to the state when they are no longer needed. Materials in the medium needed by the teacher may be requisitioned by a textbook coordinator after the superintendent of schools has certified to the commissioner of education:

(1) the name of the teacher;

(2) the grade or subject taught; and

(3) the fact of the teacher's visual impairment.

(g) Large type instructional materials shall meet or exceed the specifications in §66.7 of this title (relating to Manufacturing Standards and Specifications) and any additional specifications that may be prescribed.

(h) Copies of adopted instructional materials in braille, large type, or in an electronic file that are requested by a parent who is blind or visually impaired shall be furnished without cost. Materials in the medium needed by the parent may be requisitioned by a textbook coordinator. Requests for electronic files will be filled by the TEA after the parent signs and the TEA receives a statement, through the appropriate school district, promising that the parent will safeguard the security of the files and observe all current copyright laws including those that forbid reproduction of the files and their transfer to other parties. All braille and large type textbooks and electronic files with educational content that have been provided to parents who are blind or visually impaired must be returned to the local school district at the end of the school year for reuse.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.9, 153.13, 153.18

The Texas Appraiser Licensing and Certification Board proposes amendments to §§153.1, 153.9, 153.13, and 153.18.

Section 153.1 amends the definition of a fundamental real estate course to tie it specifically to the courses recognized by the Appraiser Qualifications Board as qualifying education. Section 153.9 amends the legal questions on all applications relating to civil judgements rendered. Section 153.13 clarifies that fundamental or qualifying education courses must be approved by the Appraiser Qualifications Board or offered by an accredited college or university. It also simplifies the process for obtaining TALCB course approval and makes the period for which the course is approved the same as the period for AQB approval. Section 153.18 clarifies that an individual whose continuing education is deferred may be placed on inactive status and must complete the missed continuing education before returning to active status as mandated by the Appraisal Subcommittee. Section 153.18 provides that the Appraiser Continuing Education (ACE) classroom courses must have either AQB approval or be approved by another state appraiser licensing and certification board. ACE distance courses must be approved by the AQB or be offered by an accredited college or university.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Thorburn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of these amendments is that the process of obtaining appraiser course approval will be simplified. There will be no effect on small businesses. There is no cost to individuals required to comply with the proposed amendments.

Comments on the proposed amendments may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

No other code, article, or statute is affected by this proposal.

§153.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (27) (No change.)

(28) Fundamental real estate appraisal course--those courses approved by the Appraiser Qualifications Boards as qualifying education. [~~Basic real estate appraisal courses which include the following topics, but are not limited to, principles of real estate appraisal, real estate appraisal practice, real estate appraisal procedures, highest and best use, report writing, rural appraisal, appraisal review, residential appraisal/valuation, agricultural property appraisal, sales comparison approach, cost approach, income capitalization, discounted cash flow analysis, real estate appraisal case studies, commercial appraisal, non-residential real estate appraisal, and other courses specifically determined by the board.~~]

(29) - (56) (No change.)

§153.9. Applications.

(a) (No change.)

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for Appraiser Certification or Licensing, TALCB Form ACL 1-0 (06) [~~(04)~~];

(2) Application for Provisional Appraiser License, TALCB Form APL 2-0 (06) [~~(804)~~];

(3) Affidavit Declining Sponsorship, TALCB Form ADS 2A-0 (804);

(4) Application for Approval as an Appraiser Trainee, TALCB Form AAT 3-0 (06) [~~(804)~~];

(5) Supplement to Application for Appraiser Certification or Licensing by Reciprocity, TALCB Form ACR 4-0 (06) [~~(804)~~];

(6) Temporary Non-Resident Appraiser Registration, TALCB Form TRN 5-0 (06) [~~(804)~~];

(7) - (17) (No change.)

(c) - (h) (No change.)

§153.13. Educational Requirements.

(a) - (e) (No change.)

(f) The board may approve courses submitted or to be submitted by applicants for appraiser certification upon a determination of the board that:

(1) the subject matter of the course was appraisal related; provided that core real estate courses set forth in Texas Civil Statutes, Article 6573a, 7(a)(1) and (2) shall be deemed appraisal-related;

(2) the course was offered by an accredited college or university, [~~a school accredited by a real estate or appraiser certification or licensing agency of this or another state, a professional trade association, or a service-related school such as the United States Armed Forces Institute;~~] or the course was [~~offered or~~] approved by the Appraiser Qualifications Board under its course approval process as a qualifying education course [~~a federal agency or commission or by an agency of this state~~];

(3) the applicant obtained credit received in a classroom presentation the hours of instruction for which credit was given and successfully completed a final examination for course credit except as specified in subsection (l) of this section (relating to distance education); and

(4) the course was at least 15 classroom hours in duration, which includes time devoted to examinations which are considered to be part of the course.

[~~(g) For the purposes of this section, a professional trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting the common interest of its members.~~]

(g) [~~(h)~~] The board may require an applicant to furnish materials such as course outlines, syllabi, course descriptions or official transcripts to verify course content or credit.

(h) [~~(i)~~] Course providers may obtain prior approval of a course by filing forms prescribed by the board and submitting a letter indicating that the course has been approved by the Appraiser Qualifications Board under its course approval process. [~~the following items listed in paragraphs (1) - (4) of this subsection to the board:~~]

[~~(1) a copy of any textbook, course outline, syllabus, or other written material used in the course;~~]

[~~(2) a copy of the question and answers to the written final examination, with an answer key or the correct answers indicated; and~~]

[~~(3) sample course completion certificate or other evidence of successful completion of the course; and~~]

[~~(4)~~] [~~such~~] Such prior approval of courses will remain in effect for a period commensurate with the period of the approval granted by the Appraiser Qualifications Board. [~~of two years after the date of approval.~~]

(i) [~~(j)~~] The board shall accept classroom hour units of instruction as shown on the transcript or other document evidencing course credit if the transcript reflects the actual hours of instruction the student received. Fifteen classroom hours of credit may be awarded for one semester hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for one quarter hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for each continuing education credit from an acceptable provider. The board may not accept courses repeated within three years of the original offering unless the subject matter has changed significantly.

(j) [~~(k)~~] Instructors who are also certified or licensed appraiser may receive up to one half of their continuing education requirement from instruction of appraisal courses or seminars. Credit for instructing any given course or seminar can only be awarded once during a continuing education cycle. [~~Teachers of appraisal courses may receive credit for meeting the educational classroom hours requirement. Teaching of appraisal courses is not acceptable for meeting the experience requirement. Applicants must provide documentation as requested by the board to establish credit for teaching appraisal courses. Education credit for teaching a particular course may be claimed only once in each three year period.~~]

(k) [~~(l)~~] Distance education courses may be acceptable to meet the classroom hour requirement, or its equivalent, provided that the course is approved by the board and meets one of the following conditions listed in paragraphs (1) - (3) of this subsection.

(1) the course must have been presented by an accredited college or university that offers distance education programs in other disciplines, and

(A) the person has successfully completed a written examination administered to the positively identified person at a location and proctored by an official approved by the college or university; and

(B) the content and length of the course must meet the requirements for real estate appraisal related courses established by this chapter and by the requirements for qualifying education established by the Appraiser Qualifications Board of the Appraisal Foundation and is equivalent to a minimum of 15 classroom hours.

(2) The course has received the [~~American Council on Education's Program on Non-collegiate Sponsored Instructions (ACE PONSI), or its successor,~~] approval for college credit, or has been approved under the AQB Course Approval program; and

(A) the person successfully completes a written examination proctored by an official approved by the presenting entity;

(B) the course meets the requirements for qualifying education established by the Appraiser Qualifications Board and is equivalent to the minimum of 15 classroom hours.

(3) A minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(l) [~~(m)~~] "In-house" education and training is not acceptable for meeting the educational requirements for certification or licensure.

(m) [~~(n)~~] To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP) educational requirement, a course must:

(1) Be devoted to the Uniform Standards of Professional Appraisal Practice (USPAP) with a minimum of 15 classroom hours of instruction;

(2) Use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(3) Provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(4) utilize the "National Uniform Standards of Professional Appraisal Practice (USPAP) Course" promulgated by the Appraisal Foundation, including the Student Manual and Instructor Manual or an equivalent USPAP course as determined by the AQB.

(n) [~~(o)~~] Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, provided that the educational provider has notified the board of the AQB approval.

(o) [~~(p)~~] Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

§153.18. Appraiser Continuing Education.

(a) - (b) (No change.)

(c) The appraiser continuing education requirement as set forth in section 153.17 of this title (relating to Renewal of Certification, License or Trainee Approval) for a person previously licensed or certified by the board under this act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas is [~~are~~] deferred until the next renewal of a license or certification provided

(1) the person furnishes a copy of official orders or other official documentation acceptable to the board showing that the person was on active duty outside the state during the person's last renewal period, and[~~.~~]

(2) the certificate, license or trainee authorization is placed on inactive status until completion of continuing education requirements.

(d) In approving ACE courses, the board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB).

(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(2) The following types of educational offerings that may be accepted for meeting the ACE requirements are listed in subparagraphs (A) - (L) of this paragraph:

(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB) for continuing education;

(ii) the course was not repeated within a three year period; and

(iii) the educational offering is at least two hours in length.

(B) The board shall accept as continuing education any continuing education offering that has been approved by the Appraiser Qualifications Board course approval process or by another state appraiser licensing and certification board. Course providers may obtain prior approval or continuing education offerings by filing forms prescribed by the board and submitting a letter indicating that the course has been approved by the Appraiser Qualifications Board under its course approval process or by another state appraiser licensing and certification board. [~~complies with the guidelines of the AQB and is recognized by the Appraisal Subcommittee that a licensed or certified appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying education;~~]

[~~(C) A course specifically approved by the board for meeting ACE offered by a provider as specified in §153.13(f)(2) of this title (relating to Educational Requirements), provided the course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education and the course is at least two hours in duration;~~]

[~~(D) A course that meets the Texas Real Estate Commission mandatory continuing education (MCE) requirements, provided it is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education, and which specifically has been approved by the board.~~]

[~~(E) A seminar or other educational offering that deals with appraisal issues, offered by an appraiser trade association, a related association, or by a federal or state governmental agency, provided the offering was at least two hours in duration, and is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education.~~]

(C) [~~(F)~~] Distance education courses, provided that the course is approved by the board and [~~meets one of the following conditions listed in clauses (i) - (iv) of this subparagraph:~~]

[~~(i)~~ ~~the course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance, and is a minimum of two classroom hours and meets the requirements for continuing education courses established by the AQB; or~~]

[~~(ii)~~] the course either has been presented by an accredited college or university that offers distance education programs in other disciplines, or has been approved by the Appraiser Qualifications Board under its course approval process [~~received either the American Council on Education's Program on Non-collegiate Sponsored Instruction (ACE/PONSI), or its successor, approval for college credit or the AQB's approval through the AQB Course Approval Program; and the course meets the following requirements listed in subclauses (I) - (II) of this clause:~~]

[~~(I)~~] [~~the course is equivalent to a minimum of two classroom hours in length and meets the requirements for real estate appraisal-related courses established by the Appraiser Qualifications Board;~~] and

[~~(II)~~] the student successfully completed a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation.[~~; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation with demonstrated mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).~~]

~~*[(iii)* the content and length of the course must meet the requirements for appraiser continuing education established by this chapter and must be devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education; and]~~

~~*[(iv)]*~~ [a] A minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(D) [~~(G)~~] "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.

(E) [~~(H)~~] To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP), appraiser continuing education (ACE) requirement, a course must:

(i) be the National USPAP Update Course or National USPAP Course or its equivalent as determined by the AQB;

(ii) use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(iii) provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; additionally,

(iv) providers may include up to one additional hour of supplemental Texas specific information. This may include such topics as the TALCB Act, TALCB Rules, processes and procedures, enforcement issues, or other topics deemed to be appropriate by the board

~~[(I) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation are acceptable for meeting ACE requirements.]~~

(F) [~~(J)~~] As part of the 28 classroom hour ACE requirement, an appraiser must successfully complete a minimum of seven classroom hours of instruction devoted to the USPAP before each renewal.

(G) [~~(K)~~] Appraiser continuing education credits may also be granted for participation, other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.

(H) [~~(L)~~] Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601539

Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 465-3950

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CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.7

The Texas Appraiser Licensing and Certification Board proposes amendments to §157.7 Denial of a License.

Section 157.7 clarifies that individuals wishing to contest a denial or licensure or certification may appeal to the agency's Administrative Law Judge instead of seeking an appeal through the State Office of Administrative Hearing (SOAH).

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period that this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Thorburn has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of this amendment is that it provides the procedure for an individual to appeal a license or certification denied by the Board. There will be no effect on small businesses. There will be no cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

No other code, article, or statute is affected by this proposal.

§157.7. Denial of a License.

If the board denies a certification or license to an applicant under the Act, the board immediately shall give written notice of the denial to the applicant. Notice and hearings relating to denial of a license issued by the board shall be governed by the Act and by Texas Government Code Annotated, §§2001.001, et seq. In the case of an application for approval as an appraiser trainee the board shall also notify a sponsoring certified appraiser of the denial, but a sponsoring appraiser is not required to request a hearing or to be named or admitted as a party in the proceeding before the board. A hearing pursuant to this section shall be held at a place designated by the board and presided over by the agency's administrative law judge who shall conduct the hearing and issue final decisions for the board. Failure to request a hearing within 30 days of the written notice of denial waives judicial appeal, and the board determination becomes final and unappealable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601540
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 465-3950

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PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.4

The Polygraph Examiners Board proposes an amendment to §391.4, concerning State Examinations for Polygraph Examiners License.

Section 391.4(1) and (8) are amended for general grammatical clean-up.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five year period the amendment is in affect, there will be no fiscal implications to state or local government as a result of enforcing the amendment as proposed.

Mr. DiTucci also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an updated rule. There will be no effect on small or micro businesses. There are no anticipated economic costs to individuals required to comply with the rule as proposed.

Comments on the amendment may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001.

The amendment is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the amendment.

§391.4. State Examinations for Polygraph Examiners License.

State examinations for polygraph examiner license shall conform with the following.

(1) When an intern becomes eligible, as provided by law, the intern may take the state examination for a polygraph examiners license under the direct supervision of the Board. The intern can take the academic and scenario portions of the licensing examination under the Executive Officer's [~~Director~~] supervision any time after successful graduation from a Board approved polygraph school. The oral board portion of the licensing examination can only be taken after the intern has completed five (5) full months of internship under a sponsoring, licensed examiner

(2) Such examinations shall be held at Austin, Texas, or at other locations designated by the Board. Persons eligible to take the examination will be notified of the time, date, and location.

(3) Examinations shall be held at the discretion of the Board, the dates, locations, and times being designated by the Board.

(4) Examinations shall consist of and include questions relating to those topics set forth in the internship training schedule and a presentation of actual polygraph examinations conducted by the applicant during their internship training for Board evaluation.

(5) The grades by all grading members on the licensing examinations will be totaled and averaged and a grade of seventy percent (70%) must be obtained in order to pass.

(6) Failure to pass any portion of the examination shall require such person to retake that portion failed. No polygraph examiner's license shall be issued until the intern has passed all portions of the examination.

(7) Persons failing any portion(s) thereof may retake the portion(s) at the next scheduled examination date, provided that such person is qualified to retake the portion(s) under the law or as set forth herein under the rules and regulations pertaining to interns. Provided further that if any person taking and failing any portion of such examination for the third time, such person shall not be eligible to take another examination until the expiration of twelve (12) months from the date of the last examination, providing such person is otherwise qualified to take such examination by law and under the applicable regulations.

(8) When an intern fails the original licensing examination, or any portion thereof, the intern shall not be permitted to engage in any actual polygraph testing until such time as the intern and the sponsor have reviewed the failing examination with a member of the Board or a member of the Board's staff at the discretion of the Presiding Officer [~~presiding officer~~]. The time, date, and place of the review will be designated by the Board or its staff. The sponsor shall furnish the Presiding Officer [~~presiding officer~~] or their designated representative with a written affidavit stating what corrective action will be taken or an oral discussion of those corrective actions acceptable to the Presiding Officer [~~presiding officer~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601573
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 424-2058

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 123. RESPIRATORY CARE PRACTITIONER CERTIFICATION

25 TAC §§123.1 - 123.16

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§123.1-123.16,

concerning the certification and regulation of respiratory care practitioners.

BACKGROUND AND PURPOSE

The amendments implement House Bill (HB) 2680, 79th Legislature, Regular Session (2005), located in Occupations Code, Chapter 112, relating to reduced fees and continuing education requirements for retired health professionals, including respiratory care practitioners, engaged in the provision of voluntary charity care; and HB 102, 79th Legislature, Regular Session (2005), which amended Occupations Code, Chapter 604, relating to the renewal requirements for a respiratory care practitioner certificate. In addition, the proposed amendments reflect the name change of the "Texas Department of Health" to the "Department of State Health Services"; clarify the amount of time a person can hold a temporary permit and renew a temporary permit; and remove obsolete language regarding one-year renewals.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 123.1-123.16 have been reviewed and the need for the rules continues to exist; however, revisions are necessary to implement recent legislation and to update and clarify the rules.

SECTION-BY-SECTION SUMMARY

An amendment to §123.1 updates language to include references for advisory committee. Sections 123.2, 123.3, 123.4, 123.5, 123.6, 123.8, 123.11, 123.13, 123.14, and 123.15 to replace terms made obsolete by statutory change such as "Texas Department of Health," to "Department of State Health Services" and accompanying references to the abolished "Texas Board of Health", "board", and "administrator", and "replace them with the "Department of State Health Services", "department", or "Executive Commissioner of the Health and Human Services Commission," as appropriate. Amendments to §123.4 remove obsolete language regarding the one-year application fee and temporary extension fee. Section 123.5 is amended to change 45 days of graduation to 30 days of graduation to apply for a temporary permit. Amendments to §123.6 remove language on requiring a photo with the application for certification, and the medical director's signature on the application to reflect changes necessary to facilitate online application for certification, change the deadline from 180 days for denial of certification to 90 days, and remove temporary extension language. Section 123.7 is amended to remove obsolete language related to issuing a license for a one-year term, and remove language regarding the temporary permit extension. Amendments to §123.9 remove the required signature of the supervising physician on the renewal form, remove language regarding temporary permit extension, clarify renewal of a temporary permit, and add new language regarding respiratory care practitioners performing voluntary charity care. Section 123.10 is amended to remove obsolete language regarding one-year renewal, and add standards for renewal for respiratory care practitioners performing voluntary charity care. Amendments to §123.12 update the standards in the practice of respiratory care regarding patient records and substandard care. Section 123.14 is amended to set out the department's options for enforcement if a licensee violates an order issued by the department. An amendment to §123.16 removes language related to renewal of a temporary permit.

FISCAL NOTE

Kathy Perkins, Director, Health Care Quality Section, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the sections as proposed. The impact of the possible decrease in renewal fees collected due to the implementation of reduced renewal fees for retired respiratory care practitioners over the age of 55 providing voluntary charity care is estimated to be $9,200 each fiscal year. Approximately 368 respiratory care practitioners are estimated to provide retired voluntary charity care services at a reduced renewal fee of $25 biennially.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the certification and regulation of respiratory care practitioners.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the pubic health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Pam K. Kaderka, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6628 or by email to Pam.Kaderka@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been

reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, Chapters 112 and 604; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapters 112 and 604; Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§123.1. Context.

These sections cover definitions; the advisory committee [~~committee's operation~~]; fees; exceptions to certification; application requirements and procedures; types of certificates, temporary permits, and applicant eligibility; examination; certificate renewal; continuing education requirements; changes of name or address; professional and ethical standards; certifying or permitting persons with criminal background to be respiratory care practitioners; violations, complaints and subsequent actions.

§123.2. Definitions.

The following words and terms when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

[~~(3) Administrator--The department employee designated as the administrator of certification activities authorized by the Act.~~]

(3) [~~(4)~~] Advisory committee--The Respiratory Care Practitioners Advisory Committee.

(4) [~~(5)~~] Aides/orderlies--Health care workers who perform routine tasks under the direct supervision of a respiratory care practitioner such as transporting patients, assembling treatment equipment, preparing work areas, and other assigned duties. Aides/orderlies may not perform respiratory care procedures.

(5) [~~(6)~~] AMA--The American Medical Association.

(6) [~~(7)~~] Applicant--A person who applies to the [~~Texas~~] Department of State Health Services for a certificate or temporary permit.

(7) [~~(8)~~] Appropriate educational agency--The Texas Education Agency or other governmental agency authorized by law or statute to approve educational institutions and curriculum, or an educational accrediting body of a professional organization, such as the Committee on Accreditation for Respiratory Care (COARC) and its predecessor or successor organization.

[~~(9) Board--The Texas Board of Health~~]

(8) [~~(10)~~] BME--Texas State Board of Medical Examiners.

(9) [~~(11)~~] Certificate--A respiratory care practitioner certificate issued by the [~~Texas~~] Department of State Health Services.

(10) [~~(12)~~] Commissioner--The commissioner of the [~~Texas~~] Department of State Health Services.

(11) [~~(13)~~] Delegated authority--As defined in the Texas Medical Practice Act, Texas Occupations Code, Chapter 157 and the rules pertaining thereto adopted by the BME.

(12) [~~(14)~~] Department--The [~~Texas~~] Department of State Health Services.

(13) [~~(15)~~] Diagnostic--Of or relating to or used in the art or act of identifying a disease or disorder.

(14) [~~(16)~~] Educational accrediting body--The Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor organization which approves respiratory care education programs.

(15) [~~(17)~~] Formally trained--Completion of an organized educational activity which:

(A) includes supervised and directed instruction specific to the respiratory care procedures to be performed by the individual;

(B) includes specific objectives, activities, and an evaluation of competency; and

(C) is supervised and directed by another individual qualified to provide the training and supervision.

(16) [~~(18)~~] NBRC--The National Board for Respiratory Care, Inc., and its predecessor or successor organizations.

(17) [~~(19)~~] Palliative--Serving to moderate the intensity of pain or other disease process.

(18) [~~(20)~~] Practice--Engaging in respiratory care as a clinician, educator, or consultant.

(19) [~~(21)~~] Qualified medical director--A physician licensed and in good standing with the BME, and who has special interest and knowledge in the diagnosis and treatment of respiratory care problems who is actively engaged in the practice of medicine. This physician must be a member of the active medical staff of a health care facility, agency or organization who supervises the provision of respiratory care.

(20) [~~(22)~~] Respiratory care--The treatment, management, control, diagnostic evaluation, and care of inpatients or outpatients who have deficiencies and abnormalities associated with the cardiorespiratory system. Respiratory care does not include the delivery, assembly, set up, testing, and demonstration of respiratory care equipment upon the order of a licensed physician. Demonstration is not to be interpreted here as the actual patient assessment and education, administration, or performance of the respiratory care procedure(s).

(21) [~~(23)~~] Respiratory care education program--

(A) a program in respiratory care approved by the educational accrediting body;

(B) a program approved by an appropriate education agency and working toward becoming an approved program in respiratory care. A program will qualify as a respiratory care education program under this subparagraph only for a period of one year from the date of the first class offered by the program; after that one year, the program must be an approved program in respiratory care; or

(C) a program accredited by the Canadian Medical Association and whose graduates are eligible to take the national registry exam given by the Canadian Board of Respiratory Care.

(22) [~~(24)~~] Respiratory care practitioner (RCP)--A person permitted or certified under the Act to practice respiratory care.

(23) [~~(25)~~] Respiratory care procedure--Respiratory care provided by the therapeutic and diagnostic use of medical gases, the delivery of humidification and aerosols [~~humidifiers, and aerosols~~],

the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique employed to assist in diagnosis, monitoring, treatment, and research, including the measurement of ventilatory volumes, pressures and flows, the specimen collection of blood and other materials, pulmonary function testing, and hemodynamic and other related physiological forms of monitoring or treating, as ordered by the patient's physician, the cardiorespiratory system. These procedures include:

(A) administration of medical gases - such as nitric oxide, helium and carbon dioxide;

(B) providing ventilatory assistance and ventilatory control - including high frequency oscillatory ventilation and high frequency jet ventilation;

(C) providing artificial airways - including insertion, maintenance and removal;

(D) performing pulmonary function testing - including neonatal and pediatric studies;

(E) hyperbaric oxygen therapy;

(F) monitoring - including pulse oximeter, end-tidal carbon dioxide and apnea monitoring;

(G) extracorporeal membrane oxygenation (ECMO);

(H) patient assessment, respiratory patient care planning; and

(I) implementation of respiratory care protocols.

(24) [~~(26)~~] Respiratory therapist--A person permitted or certified under the Act to practice respiratory care.

(25) [~~(27)~~] Temporary permit--A permit issued in accordance with §123.7(d) of this title (relating to Types of Certificates, Temporary Permits, and Applicant Eligibility) for a period of six months.

(26) [~~(28)~~] Therapeutic--Of or relating to the treatment of disorders by remedial agents or methods.

(27) [~~(29)~~] Under the direction--Assuring that established policies are carried out; monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.

§123.3. Respiratory Care Practitioners Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is established under Government Code, §531.012, [~~the Health and Safety Code, §11.016,~~] which allows the Executive Commissioner of the Health and Human Services Commission [~~Texas Board of Health (board)~~] to appoint [~~establish~~] advisory committees as needed.

(b) (No change.)

(c) Purpose. The purpose of the committee is to recommend rules and examinations for the approval of the Executive Commissioner of the Health and Human Services Commission [~~board~~].

(d) Tasks.

(1) The committee shall advise the Executive Commissioner of the Health and Human Services Commission [~~board~~] concerning rules relating to the certification of respiratory care practitioners.

(2) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission [~~board~~].

(e) Review and duration. By November 1, 2007, the Executive Commissioner of the Health and Human Services Commission [~~board~~] will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the Executive Commissioner of the Health and Human Services Commission [~~board~~]. The composition of the committee shall include:

(1) - (3) (No change.)

(g) (No change.)

(h) Officers. The committee shall select from its members the presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year.

(1) (No change.)

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the Executive Commissioner of the Health and Human Services Commission [~~board~~]. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) - (6) (No change.)

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of the Department of State Health Services [~~Texas Department of Health~~] (department) staff and either the presiding officer or at least three members of the committee.

(2) - (7) (No change.)

(j) - (k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) - (4) (No change.)

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A summary of the meeting shall be provided to the Executive Commissioner of the Health and Human Services Commission [~~board~~] and each member of the committee within 30 days of each meeting.

(B) (No change.)

(m) (No change.)

(n) Statement by members.

(1) The Executive Commissioner of the Health and Human Services Commission, [~~board, the~~] department, and the committee shall

not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner of the Health and Human Services Commission,[~~board,~~] department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner of the Health and Human Services Commission, [~~board, the~~] department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) - (6) (No change.)

(o) Reports to Executive Commissioner of the Health and Human Services Commission [~~board~~]. The committee shall file an annual written report with the Executive Commissioner of the Health and Human Services Commission [~~board~~].

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission, [~~board~~], the status of any rules which were recommended by the committee to the Executive Commissioner of the Health and Human Services Commission, [~~board~~], and anticipated activities of the committee for the next year.

(2) (No change.)

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the Executive Commissioner of the Health and Human Services Commission [~~board~~] each November. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, §2110.004 [~~Chapter 2110~~], a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) - (5) (No change.)

(q) (No change.)

§123.4. Fees.

The following fees are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).

(1) Schedule of fees for certification as a respiratory care practitioner:

(A) application (includes initial certificate) fee-- $120 [~~for applications filed on or before December 31, 2004--$60~~];

[~~(B) application (includes initial certificate) fee for applications filed on or after January 1, 2005--$120;~~]

(B) [~~(C)~~] renewal fee for a license issued for a one-year [~~one year~~] term is $50;

(C) [~~(D)~~] renewal fee for a license issued for a two-year [~~two year~~] term is $100;

(D) renewal fee for a license issued to a retired respiratory care practitioner performing voluntary charity care for a two-year term is $50;

(E) - (M) (No change.)

(N) for all applications and renewal applications, the department [~~(or board)~~] is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online; and

(O) for all applications and renewal applications, the department [~~(or board)~~] is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(2) Schedule of fees for a temporary permit as a respiratory care practitioner:

(A) (No change.)

(B) temporary permit renewal [~~extension~~] fee--$20;

(C) - (E) (No change.)

(3) - (4) (No change.)

(5) The department [~~administrator, on behalf of the board,~~] shall make periodic reviews of the fee schedule and recommend any adjustments necessary to provide sufficient funds to meet the expenses of the respiratory care practitioner certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments approved by the Executive Commissioner of the Health and Human Services Commission [~~board~~].

§123.5. Exemptions.

(a) - (b) (No change.)

(c) Student status.

(1) - (4) (No change.)

(5) Students who are within 30 [~~45~~] days of graduation may apply to the department for a temporary permit in accordance with §123.6 of this title (relating to Application Requirements and Procedures). A person who holds a temporary permit may perform any and all respiratory care procedures which he or she has been trained to perform.

(d) (No change.)

§123.6. Application Requirements and Procedures.

(a) (No change.)

(b) Required application materials.

(1) Application form. The application form shall contain:

(A) - (H) (No change.)

(I) the signature of the applicant which has been dated.[~~;~~]

[~~(J) A full face color photograph signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two year period prior to application to the department and the minimum size is one and one-half inches by one and one-half inches.~~]

(2) Educational record for regular certification. The department shall issue a regular certificate to an applicant who is currently credentialed by the National Board for Respiratory Care (NBRC) and nationally certified as a Certified Respiratory Therapist [~~Practitioner~~]

(CRT), [~~a Certified Respiratory Therapy Technician (CRTT),~~] or a Registered Respiratory Therapist (RRT), upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue a regular certificate to a person which is currently credentialed by the National Board for Respiratory Care (NBRC).

(3) (No change.)

(4) Examination results.

(A) If the applicant is making application for a temporary permit, an examination score release form shall be signed allowing the department to obtain the applicant's examination results from the NBRC, or other agency administering the examination prescribed by the department [~~board~~].

(B) (No change.)

(5) (No change.)

[~~(6) Medical direction requirement. If the applicant is practicing respiratory care in Texas at the time of application to the department, the applicant shall provide on the application form the signature and license number of the qualified medical director as defined in §123.2 of this title (relating to Definitions) or other Texas licensed physicians directing the provision of respiratory care services.~~]

(c) (No change.)

(d) Application processing.

(1) Time periods. The department shall comply with the following procedures in processing applications for a permit or certificate.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for permit or certification--14 working days. The notice of acceptance may include a statement that an application for temporary permit received more than 30 [~~45~~] days from the date of the applicant's graduation will be held pending until the applicant is within 30 [~~45~~] days of graduation; and

(ii) (No change.)

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law, and of the opportunity for a formal hearing. The time periods are as follows:

(i) (No change.)

(ii) letter of denial of permit or certificate--90 [~~180~~] working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement shall be made to the department [~~program administrator~~]. If the department [~~program administrator~~] does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) (No change.)

[~~(3) Appeal. If a request reimbursement under paragraph (2) of this subsection is denied by the program administrator, the applicant may appeal to the commissioner of health for a timely, resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner of health at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The program administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner of health shall provide written notice of the decision to the applicant and the program administrator. An appeal shall be decided in favor of the applicant if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.~~]

(3) [~~(4)~~] Contested cases. The time periods for contested cases related to the denial of licensure renewals are not included with the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. [~~a hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.~~]

(e) (No change.)

(f) Disapproved applications.

(1) The department shall disapprove the application if the person:

(A) (No change.)

(B) has failed to pass the examination [~~prescribed by the board~~] as set out in §123.8 of this title (relating to Examination) during the period for which the temporary certificate, or temporary permit [~~or temporary permit extension,~~] was valid, if applicable;

(C) - (I) (No change.)

(2) If after review the department [~~administrator~~] determines that the application should not be approved, the department [~~administrator~~] shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the Administrative Procedure Act, Texas Government Code 2001, et seq. Within 10 days after receipt of the written notice, the applicant shall give written notice to the department [~~administrator~~] that the applicant either waives the hearing, or wants the hearing. Receipt of the written notice is deemed to occur on the tenth day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the department [~~administrator~~] that the hearing be waived, the applicant is deemed to have waived the hearing. If the hearing has been waived, the department shall disapprove the application.

(3) An applicant whose application has been disapproved under paragraph (1)(E) and (F) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with all rules of the department [~~board~~] and the provisions of the Act in effect at the time of reapplication. The

date of disapproval is the effective date of a disapproval order signed by the commissioner of health or the commissioner's designee.

§123.7. Types of Certificates and Temporary Permits and Applicant Eligibility.

(a) (No change.)

(b) Issuance of certificates and permits.

(1) (No change.)

(2) [~~Certificates issued within three months of the practitioner's birth month shall be issued for the next full renewal period.~~] Certificates shall expire on the last day of the practitioner's birth month.

(c) (No change.)

(d) Applicant eligibility.

(1) Temporary permit. Temporary permits are valid for a six-month period. The department shall issue a temporary permit to practice respiratory care to:

(A) an applicant who:

(i) - (iii) (No change.)

(iv) meets all qualifications for a certificate except taking the written examination prescribed by the department for certification. An applicant may file an application if he or she is within 30 [~~45~~] days prior to graduation. A temporary permit is valid for six months from date of issuance by the department. After the applicant passes the examination, as set out in §123.8 of this title (relating to Examination), and pays the prescribed fee, a regular certificate shall be issued and the temporary permit shall become null and void;

(B) (No change.)

[~~(C) an applicant who holds a valid temporary permit pending reexamination who has applied for an extension of the temporary permit on the form prescribed by the department and who has paid the additional prescribed fee. This temporary permit shall expire not more than 12 months from the date of issuance of the original permit. A temporary permit holder is not entitled to an extension if the person has not submitted a certificate of completion from a respiratory care education program in accordance with §123.6(b)(2)(C) of this title (relating to Application Requirements and Procedures). After the applicant passes the examination as set out in §123.8 of this title (relating to Examination) and has paid the prescribed fee, a regular certificate shall be issued and the temporary permit shall become null and void.~~]

(2) - (3) (No change.)

§123.8. Examination.

(a) - (d) (No change.)

(e) Results.

(1) Results of an examination prescribed by the department [~~board~~] but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) - (5) (No change.)

(f) Refunds. Examination fee refunds to persons who fail to appear for the examination will be in accordance with policies and procedures of the NBRC, or other agency approved by the department [~~board~~] to administer an examination prescribed in this section.

§123.9. Certificate Renewal.

(a) - (b) (No change.)

(c) Certificate renewal.

(1) (No change.)

(2) The renewal form for all practitioners shall require the provision of the preferred mailing address, primary employment address and telephone number, and category of employment, misdemeanor and felony convictions, statement concerning status with The National Board for Respiratory Care, Inc., and continuing education completed. [~~If the applicant is practicing as a respiratory care practitioner at the time of renewal the name, signature and license number of the physician directing the provision of respiratory care and the physician's institutional affiliations(s), if any, shall be provided on the renewal form if requested by the department.~~]

(3) - (4) (No change.)

(5) A temporary permit may be renewed once for an additional six-month period.

(d) Late renewal or reapplication.

(1) A person whose certificate has expired may renew the certificate by submitting to the department the renewal form, continuing education as set out in §123.10 of this title (relating to Continuing Education Requirements) completed since the last renewal, and if respiratory care procedures were performed after the certificate expired, a statement indicating how the person complied with the Act, §604.003.

(A) - (B) (No change.)

[~~(C) If the person received a 90-day extension of the person's certificate pursuant to §123.10(f) of this title (relating to Continuing Education Requirements), the expiration date under subparagraphs (A)-(B) of this paragraph is the expiration date of the person's last annual certificate.~~]

(C) [~~(D)~~] After the certificate is renewed, the next continuing education reporting period starts on the date the certificate is renewed and continues until the next expiration date.

[~~(2) The department shall inform a person who has not renewed a certificate by the expiration date of the amount of the fee required for renewal, the continuing education required for renewal, and the date the certificate expired.~~]

(2) [~~(3)~~] A person whose certificate has been expired for one year or more may apply for a new certificate by complying with the then-current requirements for obtaining a certificate.

(3) [~~(4)~~] After a certificate is expired and until a person has renewed the certificate, a person may not practice respiratory care in violation of the Act.

(4) [~~(5)~~] A person who fails to renew a certificate within one year may obtain a new certificate without examination if the person:

(A) pays a fee that is equal to two times the renewal fee;

(B) is currently certified as a respiratory care practitioner in another state;

(C) has been practicing respiratory care in the state where the certification is held for the two years preceding the date of application for renewal; and

(D) submits proof of completion of the continuing education requirements as set out in §123.10 of this title within the 24-month [~~12 month~~] period preceding the date of the renewal application [~~for a new certificate~~].

(e) - (f) (No change.)

(g) Inactive status. A respiratory care practitioner who holds a certificate under the Act and who is not actively engaged in the practice of respiratory care may make application to the department in writing on a form prescribed by the department to be placed on an inactive status list maintained by the department. The application for inactive status and the inactive fee must be postmarked prior to the expiration of the respiratory practitioner's annual certificate. No refund will be made of any fees paid prior to application for inactive status.

(1) - (7) (No change.)

(8) If a person on inactive status desires to reenter active practice, the person shall:

(A) - (B) (No change.)

(C) pay a renewal fee for the current renewal period [~~plus a reinstatement fee equal to one-half the renewal fee~~]; and

(D) submit to the department proof of successful completion, within 24-month [~~12-month~~] period prior to reentering active status, of the continuing education hours as set out in §123.10 of this title.

(9) (No change.)

(h) (No change.)

(i) Renewal for retired respiratory care practitioners performing voluntary charity care.

(1) A "retired respiratory care practitioner" is defined as a person who is:

(A) above the age of 55;

(B) is not employed for compensation in the practice of respiratory care; and

(C) has notified the department in writing of his or her intention to retire and provide only voluntary charity care.

(2) "Voluntary charity care" for the purposes of this subsection is defined as the practice of respiratory care by a retired respiratory care practitioner without compensation or expectation of compensation.

(3) A retired respiratory care practitioner providing only voluntary charity care may renew his or her license by submitting a renewal form; the retired respiratory care practitioner renewal fee required by §123.4 of this title (relating to Fees); and the continuing education hours required by §123.10 of this title (relating to Continuing Education Requirements).

§123.10. Continuing Education Requirements.

(a) General. Continuing education requirements for renewal shall be fulfilled each renewal period [~~year~~].

(1) The initial period shall begin with the date the department issues the certificate and end on the last day of the birth month at the time of [~~the second~~] renewal.

[~~(2) At the time the certificate is mailed, each practitioner shall be notified of the beginning and ending dates of the continuing education period.~~]

(2) [~~(3)~~] A respiratory care practitioner must complete 24 [~~12~~] hours of continuing education acceptable to the department during each renewal period [~~year~~].

(3) [~~(4)~~] A clock hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(4) A respiratory care practitioner who is approved by the department for renewal in accordance with §123.9 of this title (relating to Certificate Renewal) may complete reduced continuing education requirements equal to half of the number of continuing education hours required for renewal for a certified respiratory care practitioner.

(b) - (g) (No change.)

§123.11. Changes of Name or Address.

(a) (No change.)

(b) Notification of address changes shall be made in writing, including the name, mailing address, and zip code and be mailed to the department [~~administrator~~].

(c) - (d) (No change.)

§123.12. Professional and Ethical Standards.

The purpose of this section shall be to establish the standards of professional and ethical conduct required of a respiratory practitioner pursuant to the Act, §604.201(b)(4).

(1) Professional representation and responsibilities.

(A) - (L) (No change.)

(M) A practitioner shall conform to medically accepted principles and standards of respiratory care which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the American Association for Respiratory Care, the National Board for Respiratory Care, the Texas Society for Respiratory Therapy, [~~the board,~~] the department, and other professional or governmental bodies.

(N) - (Q) (No change.)

(R) A respiratory care practitioner shall not falsify or make grossly incorrect, grossly inconsistent, or unintelligible entries in any patient's, hospital or other record.

(S) A respiratory care practitioner shall not exhibit a pattern of substandard care in the performance of duties related to the practice of respiratory care.

(T) A respiratory care practitioner shall not change the prescription of a physician or falsify verbal or written orders for treatment diagnostic regimen received, whether or not that actions resulted in actual patient harm.

(2) - (6) (No change.)

§123.13. Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners.

(a) (No change.)

(b) Procedures for revoking, suspending, suspending on an emergency basis, or denying a certificate or temporary permit to persons with criminal backgrounds.

(1) The department [~~administrator~~] shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate or temporary permit after hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 2001 [~~§2001~~], Texas Government Code, Texas Occupations Code, Chapter 53.

(2) If the department denies, suspends, suspends on an emergency basis, or revokes a certificate or temporary permit under these sections after hearing, the department [~~administrator~~] shall give the person written notice:

(A) - (D) (No change.)

§123.14. Violations, Complaints, and Subsequent Actions.

(a) General. This section establishes standards relating to:

(1) - (3) (No change.)

(4) the department's investigation of complaints and the department's and commissioner's actions, on behalf of the department [~~board~~], when offenses and prohibited actions and violations have occurred.

(b) (No change.)

(c) Filing of complaints.

(1) (No change.)

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against a practitioner or other person shall notify the department [~~administrator~~]. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department [~~administrator's office~~]. (Mailing address: 1100 West 49th Street, Austin, Texas 78756-3183, Phone: 512-834-6632.

(3) Upon receipt of a complaint the department [~~administrator~~] or the department's [~~administrator's~~] designee shall send an acknowledgment letter to the complainant and the department's complaint form which the complainant must complete and return to the department [~~administrator~~] or the department's [~~administrator's~~] designee before action can be taken. If the complaint is made by a visit to the department [~~administrator's office~~], the form may be given to the complainant at that time; however, it must be completed and returned to the department [~~administrator~~] or the department's [~~administrator's~~] designee before further action may be taken. Copies of the complaint form may be obtained from the Department of State Health Services [~~Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183~~].

(4) Anonymous complaints shall be investigated by the department [~~administrator or the administrator's designee~~], provided sufficient information is submitted.

(d) Investigation of complaints.

(1) The [~~administrator and the~~] department is [~~are~~] responsible for handling complaints.

(2) The department [~~administrator, or his or her designee,~~] shall make the initial investigation and report the findings to the manager [~~director~~] of Professional Licensing and Certification Unit [~~Division~~] or his or her designee, or the manager [~~director~~] or designee of its successor.

(e) The department's action.

(1) - (2) (No change.)

(3) The department may determine that a practitioner has violated the Act or a department [~~board~~] rule and may institute disciplinary action in accordance with subsection (f) of this section.

(4) (No change.)

(f) Disciplinary actions.

(1) - (4) (No change.)

(5) The department may take action for violation of the Act or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department.

(g) Formal hearing.

(1) (No change.)

(2) Prior to institution of formal proceedings to revoke or suspend a permit or certificate, the department [~~program administrator~~] shall give written notice to the permit or certificate holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(3) To initiate formal hearing procedures, the department [~~administrator~~] shall give the practitioner written notice for the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the practitioner must give written notice to the department [~~administrator~~] that he or she either waives the hearing or wants the hearing. Receipt of the notice is deemed to occur on the 10th day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt.

(A) - (B) (No change.)

(h) Final action.

(1) If the department suspends a certificate or permit, the suspension remains in effect until the [~~administrator or the~~] department determines that the reasons for suspension no longer exist. The respiratory practitioner whose certificate or permit has been suspended is responsible for securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The [~~administrator or the~~] department shall investigate prior to making a determination.

(2) (No change.)

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in these sections; however, the department may not renew the certificate until the [~~administrator or the~~] department determines that the reasons for suspension have been removed.

~~[(4) If the department suspends a temporary permit and the suspension is in effect at the time of the expiration of the temporary permit, the former temporary permit holder must reapply in order to obtain a new temporary permit. The department may not issue a new temporary permit until the administrator or the department determines that the reasons for suspension have been removed.]~~

(4) [~~(5)~~] A person whose application is denied or whose temporary permit or certificate is revoked or surrendered is ineligible for a temporary permit or certificate under this Act for one year from the date of the denial or revocation or surrender.

(5) [~~(6)~~] Upon revocation or nonrenewal, the former certificate or permit holder shall return the certificate or permit and any identification card(s) to the department.

§123.15. Informal Disposition.

(a) (No change.)

(b) If the department [~~program administrator~~] determines that the public interest might be served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A temporary permit or certificate holder, or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the department [~~program administrator~~].

(c) (No change.)

(d) The department [~~program administrator~~] shall decide upon the time, date, and place of the settlement conference and provide written notice to the temporary permit or certificate holder or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the temporary permit or certificate holder or applicant or by personal delivery. The ten days shall begin on the date of mailing or personal delivery. The temporary permit or certificate holder or applicant may waive the ten-day notice requirement.

(1) - (2) (No change.)

(e) - (g) (No change.)

(h) The program's legal counsel will be requested to attend each settlement conference. The department [~~program administrator~~] may call upon the program's attorney at any time for assistance in the settlement conference.

(i) - (l) (No change.)

(m) At the conclusion of the settlement conference, the department [~~program administrator~~] may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. They may also conclude that the department lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, or refer the matter for further investigation.

(n) (No change.)

(o) If the temporary permit or certificate holder or applicant rejects the proposed settlement, the matter shall be referred to the department [~~program administrator~~] for appropriate action.

(p) If the temporary permit or certificate holder or applicant signs and accepts the recommendations, the agreed order shall be submitted to the department [~~program administrator~~] for its approval.

(q) The department [~~program administrator~~] shall enter an agreed order approving the accepted settlement recommendations. The department [~~program administrator~~] may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the temporary permit or certificate holder or applicant agrees to other terms proposed by the department [~~program administrator~~].

(r) If the department [~~program administrator~~] does not approve a proposed agreed order, the temporary permit or certificate holder or applicant and the complainant shall be so informed.

(s) A temporary permit or certificate holder or applicant's opportunity for an informal conference under this section shall satisfy the requirement of the APA, §2001.054(c).

(1) If the department [~~program administrator~~] determines that an informal conference shall not be held, the department [~~program administrator~~] shall give written notice to the temporary permit or certificate holder or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the temporary permit or certificate holder or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice described in paragraph (1) of this subsection. The complainant shall be informed that he or she may also submit a written statement to the department [~~program administrator~~].

§123.16. Suspension of License Relating to Child Support and Child Custody.

(a) - (d) (No change.)

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the standard renewal procedures in the Respiratory Care Practitioner Certification Act, Texas Occupations Code, §604.153, and §604.157, concerning the issuance of renewal certificates [~~of this title (relating to Issuance of Renewal Certificate and Renewal of Temporary Permit)~~]. However, the license will not be renewed until the requirements of subsections (g) and (h) of this section are met.

(f) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601578
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

CHAPTER 143. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §§143.1 - 143.20

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§143.1 - 143.20, concerning the certification and regulation of Medical Radiologic Technologists.

BACKGROUND AND PURPOSE

Revisions to the rules are necessary to implement House Bill 2680, 79th Texas Legislature, Regular Session (2005), located in Occupations Code, Chapter 112, relating to reduced fees and continuing education requirements for retired health professionals, including medical radiologic technologists, engaged in the provision of voluntary charity care. In addition, the proposed amendments to Chapter 143 concern medical radiologic technologists definitions; fees; standards for the approval of curricula and instructors; continuing education; disciplinary actions; dangerous or hazardous procedures; mandatory training programs for non-certified technicians; and hardship exemptions. Government Code Chapter 2054 directs all department administered licensing programs to participate in Texas Online, an electronic fee payment system developed and maintained by the Texas Online Authority. Wording is added that authorizes the department to collect subscription and convenience fees, in amounts to be determined by the Texas Online Authority, to recover costs associated with application and renewal application processing. Occupations Code, Chapter 101, Subchapter G, establishes the Office of Patient Protection with the Health Professions Council and requires additional fees to fund it. Wording is added to allow the collection of fees required by the Office of Patient Protection.

The proposed amendments are necessary to implement House Bill 2292, 78th Texas Legislature, Regular Session (2003) which added Health and Safety Code, §§12.0111 and 12.0112; and House Bill 2680, 79th Texas Legislature, Regular Session (2005), relating to reduced fees and continuing education requirements for retired health professionals, including medical

radiologic technologists engaged in the provision of voluntary charity care.

The proposed amendments provide new definitions for the commissioner, x-ray equipment, portable x-ray equipment, and stationary x-ray equipment; amend the fee and add a new section concerning language for returned checks to the department; remove language allowing a 120-day continuing education extension; amend language for how many copies of an application for a limited certificate program must be submitted to the department; amend wording for a site inspection; reduce instructor-directed continuing education requirements from 50% of required hours to 3 hours; change the allowed verifiable independent self-study from 50% of hours to no more than 21 hours for a medical radiological technologist and 9 hours for a limited medical radiological technologist; add new language defining engaging in sexual misconduct as unprofessional conduct; add language to include non-certified technicians in certifying persons with criminal backgrounds; amend language concerning the expiration date for non-certified technicians; and remove language regarding persons registered to take Texas Medical Association's/Texas Osteopathic Medical Association's Physician Training program.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 143.1-143.20 have been reviewed and the need for the rules continues to exist; however revisions are necessary to implement recent legislation and to update and clarify the rules.

SECTION-BY-SECTION SUMMARY

An amendment to §143.1 updates the scope of these rules with language on applicability of chapter; exemptions. Amendments to §143.2 update language to reflect the change in agency name; delete "Board of Health" and "administrator"; update the definition of mobile service operation, add the definition for x-ray equipment portable and stationary equipment, and remove current definition of portable and mobile x-ray equipment. Section 143.3 is amended to update language to reflect the agency name change and change "board" to "Executive Commissioner of the Health and Human Services Commission". Amendments to §143.4 change the fee for limited, non-certified technician training program to reflect biennial renewals; include language to reflect collection of fees for returned checks; include the renewal fee for retired medical radiologic technologists providing voluntary charity care; and include language to reflect the authority to collect fees for Texas Online and Office of Patient Protection. Section 143.5 is amended to update language to reflect the agency name change. Amendments to §143.6 remove language requiring submission of a photo with the application packet and change language from "administrator" to "department". Section 143.7 is amended to remove grandfather clause on requirements and update language. Section 143.8 is amended to clarify language for temporary general and temporary limited certificates. Amendments to §143.9 reflect a change in how many copies an applicant is required to send to the department regarding an application for limited certificate program and update language for site inspections. Amendments to §143.10 update the term of licensure from annual to biennial; remove the 120-day continuing education extension; and add new language for renewal of a retired medical radiologic technologist performing voluntary charity care. Amendments to §143.11 modify the continuing education requirements for MRTs and LMRTs; and remove continuing education extension language. Section 143.12 is amended to change language from "administrator" to "department". Section 143.13 is amended to add the non-certified technician to language regarding applications by persons with criminal backgrounds. Section 143.14 is amended to add language regarding sexual misconduct. Section 143.15 is amended to clarify language to include all certificate holders limited and non-certified technicians. Amendments to §143.16 replace "mobile radiography" with "portable x-ray equipment", update language for agency name, and update rule citations. Section 143.17 is amended to update rule citations. Section 143.18 is amended to update language to reflect two-year renewal terms. An amendment to 143.19 removes language regarding persons registered to take Texas Medical Association's/Texas Osteopathic Medical Association's Physician Training program, which no longer exists and replaces "administrator" with "department". An amendment to 143.20 removes language regarding persons registered to take Texas Medical Association's/Texas Osteopathic Medical Association's Physician Training program, which no longer exists and updates agency's new name.

FISCAL NOTE

Kathy Perkins, Director, Health Care Quality Section, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the sections as proposed. The impact of the possible decrease in renewal fees collected due to the implementation of reduced renewal fees for retired medical radiologic technologists over the age of 55 providing voluntary charity care is estimated to be $4,712. Approximately 377 medical radiologic technologists are estimated to provide retired voluntary charity care services at a reduced renewal fee of $25 biennially.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the certification and regulation of medical radiologic technologists.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the pubic health and safety of a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Pam K. Kaderka, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6628 or by email to Pam.Kaderka@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Occupations Code, Chapter 601; Government Code, §531.0055; and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 601; Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§143.1. Purpose and Scope.

(a) (No change.)

(b) Scope. These sections cover definitions; the Medical Radiologic Technologist Advisory Committee; fees; applicability of chapter; exemptions [~~(exceptions to certification)~~]; application requirements and procedures; types of certificates; examinations; standards for curricula and instructor approval; certificate renewal; continuing education requirements; changes of name or address; certifying persons with criminal backgrounds to be medical radiologic technologists; disciplinary actions; alternate eligibility requirements; dangerous or hazardous procedures; mandatory training programs for non-certified technicians; registry of non-certified technicians; hardship exemptions; and alternate training requirements.

§143.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

[~~(2) Administrator--The department employee designated as the administrator of regulatory activities authorized by the Act.~~]

(2) [~~(3)~~] Applicant--A person who applies to the [~~Texas~~] Department of State Health Services for a certificate or temporary certificate, general or limited or a provisional certificate.

(3) [~~(4)~~] ARRT--The American Registry of Radiologic Technologists and its predecessor or successor organizations.

[~~(5) Board--The Texas Board of Health.~~]

(4) [~~(6)~~] Cardiovascular (CV)--Limited to radiologic procedures involving the use of contrast media and or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.

(5) [~~(7)~~] Certificate--A medical radiologic technologist certificate, general, limited or provisional, unless the wording specifically refers to one or the other, issued by the [~~Texas~~] Department of State Health Services.

(6) [~~(8)~~] Chiropractor--A person licensed by the Texas State Board of Chiropractic Examiners to practice chiropractic.

(7) Commissioner--The Commissioner of the Department of State Health Services.

(8) [~~(9)~~] Committee--The Medical Radiologic Technologist Advisory Committee.

(9) [~~(10)~~] Dentist--A person licensed by the Texas State Board of Dental Examiners to practice dentistry.

(10) [~~(11)~~] Department--The [~~Texas~~] Department of State Health Services.

(11) [~~(12)~~] Federally qualified health center (FQHC)--A health center as defined by 42 United States Code, §1396d(2)(B).

(12) [~~(13)~~] Fluoroscopy--The practice of examining tissues using a fluorescent screen, including digital and conventional methods.

(13) [~~(14)~~] Fluorography--Hard copy of a fluoroscopic image; also known as spot films.

(14) [~~(15)~~] General certification--An authorization to perform radiologic procedures.

(15) [~~(16)~~] Instructor--An individual approved by the department to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

(16) [~~(17)~~] Limited certification--An authorization to perform radiologic procedures that are limited to specific parts of the human body.

(17) [~~(18)~~] Limited Medical Radiologic Technologist (LMRT)--A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for medical reasons. The limited categories are the skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular.

(18) [~~(19)~~] Medical radiologic technologist (MRT)--A person who holds a general certificate issued under the Act, and who, under the direction of a practitioner, intentionally administers radiation to other persons for medical reasons.

(19) [~~(20)~~] Mobile service operation [~~radiography~~]--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use [~~Includes mobile x-ray equipment and portable x-ray equipment~~].

[~~(21) Mobile x-ray equipment--Equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled.~~]

(20) [~~(22)~~] NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

(21) [~~(23)~~] Non-Certified Technician (NCT)--A person who has completed a training program and who is listed in the registry. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

(22) [~~(24)~~] Pediatric--A person within the age range of fetus to age 18 or otherwise required by Texas law, when the growth and developmental processes are generally complete. These rules do not prohibit a practitioner taking into account the individual circumstances of each patient and determining if the upper age limit requires variation by not more than two years.

(23) [~~(25)~~] Physician--A person licensed by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~] to practice medicine.

(24) [~~(26)~~] Physician assistant--A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(25) [~~(27)~~] Podiatrist--A person licensed by the Texas State Board of Medical Podiatric [~~Medical~~] Examiners to practice podiatry.

[~~(28) Portable x-ray equipment--Equipment designed to be hand-carried.~~]

(26) [~~(29)~~] Practitioner--A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of this state and who prescribes radiologic procedures for other persons for medical reasons.

(27) [~~(30)~~] Provisional medical radiologic technologist (PMRT)--An authorization to perform radiologic procedures not to exceed 180 days for individuals currently licensed or certified in another jurisdiction.

(28) [~~(31)~~] Radiation--Ionizing radiation in amounts beyond normal background levels from sources such as medical and dental radiologic procedures.

(29) [~~(32)~~] Radiologic procedure--Any procedure or article intended for use in the diagnosis of disease or other medical or dental conditions in humans (including diagnostic x-rays or nuclear medicine procedures) or the cure, mitigation, treatment, or prevention of disease in humans that achieves its intended purpose through the emission of ionizing radiation.

(30) [~~(33)~~] Registered nurse--A person licensed by the Board of Nurse Examiners to practice professional nursing.

(31) [~~(34)~~] Registry--A list of names and other identifying information of non-certified technicians.

(32) [~~(35)~~] Sponsoring institution--A hospital, educational, or other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(33) [~~(36)~~] Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(34) [~~(37)~~] Temporary certification, general or limited--An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(35) [~~(38)~~] TRCR--Texas Regulations for the Control of Radiation, 25 Texas Administrative Code, Chapter 289 of this title. The regulations are available from the [~~Standards Branch, Bureau of~~] Radiation Branch [~~Control, Texas~~] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189 (phone 1-512-834-6688).

(36) X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, types of x-ray equipment are as follows:

(A) portable x-ray equipment--x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled. Portable x-ray equipment may also include equipment designed to be hand-carried; or

(B) stationary x-ray equipment--x-ray equipment that is installed in a fixed location.

§143.3. Medical Radiologic Technologist Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is established under Government Code, §531.012, [~~the Health and Safety Code, §11.016,~~] which allows the Executive Commissioner of the Health and Human Services Commission [~~Board of Health (board)~~] to appoint [~~establish~~] advisory committees as needed.

(b) (No change.)

(c) Purpose. The purpose of the committee is to recommend rules and examinations for the approval of the Executive Commissioner of the Health and Human Services Commission [~~board~~].

(d) Tasks.

(1) The committee shall advise the Executive Commissioner of the Health and Human Services Commission [~~board~~] concerning rules to implement standards adopted under the Act relating to the regulation of persons performing radiologic procedures.

(2) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission [~~board~~].

(e) Review and duration. By November 1, 2007, the Executive Commissioner of the Health and Human Services Commission [~~board~~] will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of eleven members appointed by the Executive Commissioner of the Health and Human Services Commission [~~board~~]. The composition of the committee shall include:

(1) - (8) (No change.)

(g) (No change.)

(h) Officers. The committee shall select from its members the presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year.

(1) (No change.)

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the Executive Commissioner of the Health and Human Services Commission [~~board~~]. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) - (6) (No change.)

(i) (No change.)

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) - (3) (No change.)

(4) The attendance records of the members shall be reported to the Executive Commissioner of the Health and Human Services Commission [~~board~~]. The report shall include attendance at committee and subcommittee meetings.

(k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) - (4) (No change.)

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A summary of the meeting shall be provided to the Executive Commissioner of the Health and Human Services Commission [~~board~~] and each member of the committee within 30 days of each meeting.

(B) (No change.)

(m) (No change.)

(n) Statements by members.

(1) The Executive Commissioner of the Health and Human Services Commission,[~~board, the~~] department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner of the Health and Human Services Commission, [~~board,~~] department, or the committee.

(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner of the Health and Human Services Commission, [~~board~~], the department or the committee except with approval by the department. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) - (6) (No change.)

~~[(o) Reports to board. The committee shall file an annual written report with the board.]~~

~~[(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.]~~

~~[(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.]~~

~~[(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each November. It shall be signed by the presiding officer and appropriate department staff.]~~

(o) [~~(p)~~] Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

§143.4. Fees.

(a) Unless otherwise specified, the fees established in this section must be paid to the department before a certificate is issued. All fees shall be submitted in the form required by the department [~~of a personal check, certified check or a money order, if paid by mail. If submitted in person, cash may be accepted by the department's cashier~~]. All fees are nonrefundable.

(b) The schedule of fees is as follows:

(1) - (13) (No change.)

(14) limited curriculum application fee--$900 [~~$450 per year~~] two-year term per course of study;

(15) - (17) (No change.)

(18) training program biennial renewal fee--$300 [~~$150~~] (the renewal fee for training programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(19) (No change.)

(20) biennial [~~annual~~] limited curriculum approval fee for general certificate programs--$450 [~~$225~~];

(21) non-certified technician application fee--$50 [~~$25~~];

(22) non-certified technician renewal fee--$50 [~~$25~~];

(23) - (25) (No change.)

(26) returned check fee--$50; and [~~$25.~~]

(27) retired medical radiologic technologist biennial renewal fee--$25.

(c) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(d) For all applications and renewal application, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(e) An applicant whose check for the application and initial certification fee is returned due to insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the department a money order or check for guaranteed funds

in the amount of the application and initial certification fee plus the returned check fee within 30 days of the date of receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(f) An approved applicant whose check for the temporary or certificate fee is returned marked insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the temporary or certificate fee plus the returned check fee within 30 days of the date of receipt of the department's notice. Otherwise, the application and the approval shall be invalid.

(g) A certificate holder whose check for the renewal fee is returned due to insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the renewal fee plus the returned check fee within 30 days of the date of receipt of the department's notice. Otherwise, the certificate shall not be renewed. If a renewal certificate has already been issued, it shall be invalid.

(h) If the department's notice, as set out in subsections (e)-(g) of this section, is returned unclaimed, the department shall mail the notice to the applicant or certificate holder by certified mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days of the postmarked date on the second mailing, the approval or certificate issued shall be invalid.

(i) The department shall make periodic reviews of the fee schedule and recommend any adjustments necessary to provide sufficient funds to meet the expenses of the medical radiologic technologist certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments.

(j) The department may notify the applicant's or the certificate holder's employer that the person has failed to comply with this section and that any approval granted or certificate issued is no longer valid.

§143.5. Applicability of Chapter; Exemptions.

(a) - (b) (No change.)

(c) This chapter does not prohibit the performance of a radiologic procedure which has not been identified as dangerous or hazardous under §143.16 of this title (relating to Dangerous or Hazardous Procedures) by the following:

(1) a person who has successfully completed a training program for non-certified technicians (NCT), in accordance with §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) and who performs the procedure under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under the Act, §§601.251 - 601.253, by the Texas State Board of Chiropractic Examiners, Texas Medical [~~State~~] Board [~~of Medical Examiners~~], Texas State Board of Nurse Examiners, or Texas State Board of Medical Podiatry Examiners;

(2) - (7) (No change.)

§143.6. Application Requirements and Procedures For Examination and Certification.

(a) (No change.)

(b) Required application materials.

(1) The application form shall contain the following items:

(A) - (F) (No change.)

(G) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued; and

(H) (No change.)

~~[(I) the signature of the applicant which has been dated; and]~~

~~[(J) a full-face color photo signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two-year period prior to application to the department and the minimum size is 1-1/2 inches by 1-1/2 inches.]~~

(2) - (3) (No change.)

(c) Application approval.

(1) The department [~~administrator~~] shall be responsible for reviewing all applications.

(2) The department [~~administrator~~] shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.

(d) Disapprove applications.

(1) (No change.)

(2) If the department [~~administrator~~] determines that the application should not be approved, the department [~~administrator~~] shall give the applicant written notice of the reason for the disapproval and of the opportunity for a formal hearing in accordance with the Administrative Procedure Act [~~with the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health)~~]. Within ten days after receipt of the written notice, the applicant shall give written notice to the department [~~administrator~~] to waive or request the hearing. If the applicant fails to respond within ten days after receipt of the notice of opportunity or if the applicant notifies the department [~~administrator~~] that the hearing be waived, the department shall disapprove the application.

(3) (No change.)

(e) Application processing.

(1) (No change.)

(2) The department shall comply with the following procedures in processing refunds of fees paid to the department.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the department [~~administrator~~]. If the department [~~administrator~~] does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) (No change.)

~~[(3) If a request for reimbursement under paragraph (2) of this subsection is denied by the administrator, the applicant may appeal to the commissioner of health for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner of health at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for~~

exceeding the applicable time period. The commissioner of health shall provide written notice of the decision to the applicant and the program administrator. An appeal shall be decided in favor of the applicant, if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.]

(3) [(4)] The time periods for contested cases related to the denial of certification or renewal are not included with the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. [A hearing may be completed within three to six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.]

§143.7. Types of Certificates and Applicant Eligibility.

(a) - (e) (No change.)

(f) Temporary general medical radiologic technologist [(general)]. To qualify as a temporary general medical radiologic technologist [(general)], an applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (c) of this section. For the general temporary certificate, an applicant must:

(1) - (5) (No change.)

(g) - (i) (No change.)

§143.8. Examinations.

(a) Examination eligibility.

(1) Holders of a temporary general certificate [certificates,] or temporary limited certificate [or general] may take the appropriate examination provided the person complies with the requirements of the Act and this chapter.

(2) (No change.)

(b) - (i) (No change.)

§143.9. Standards for the Approval of Curricula and Instructors.

(a) - (b) (No change.)

(c) Application procedures for limited certificate programs which are not accredited by JRCERT or JRCCVT. An application shall be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institution's [institutions] program. Program directors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

(1) (No change.)

(2) An original and one copy [four copies] of the entire application and supporting documentation must be submitted in three-ring binders with all pages clearly legible and consecutively numbered. Each application binder must contain a table of contents and must be divided with tabs identified to correspond with the items listed in this section. If any item is inapplicable, a page shall be included behind the tab for that item with a statement explaining the inapplicability.

(3) - (7) (No change.)

(8) In making application to the department, the program director shall agree in writing to:

(A) - (F) (No change.)

(G) issue to each student, upon successful completion of the program, a written statement in the form of a diploma or certificate of completion, which shall include the program's name, the student's name, the date the program began, the date of completion, the categories of instruction, and the signatures of the program director or independent sponsor and medical director/program advisor;

(H) [permit] site inspections by departmental representatives to determine compliance and conformity with the provision of this section will be at the discretion of the department; [. In lieu of a site inspection, the department may accept the most recent site visit report from a recognized accrediting body set out in subsection (b)(1) of this section;]

(I) - (J) (No change.)

(9) - (10) (No change.)

(d) - (h) (No change.)

§143.10. Certificate Issuance, Renewals, and Late Renewals.

(a) - (b) (No change.)

(c) Certificates. The initial general or limited certificate is valid for two years through the medical radiologic technologist's (MRT's) or limited medical radiologic technologist's (LMRT's) [next] birth month[; however, when the next birth month occurs within six months, the certificate shall be issued for that period plus the next full year in order to establish a staggered renewal system].

(d) Certificate renewal. Each MRT or LMRT shall renew the certificate biennially on or before the last day of the MRT's or LMRT's birth month.

(1) - (3) (No change.)

(4) The MRT or LMRT has renewed the certificate when the renewal form and required renewal fee are mailed on or before the expiration date of the certificate and received by the department [administrator]. The postmarked date shall be considered the date of mailing. The processing times and procedures set out in §143.6(e) of this title shall apply to renewals.

(5) (No change.)

(6) The department shall issue renewal identification cards for the current renewal period to an MRT or LMRT who has met all the requirements for renewal. The cards shall be sent to the preferred mailing address provided on the renewal application form. The renewal cards shall be issued for a two-year period [except when a certificate is renewed in accordance with paragraph (7) of this subsection or subsection (e) of this section].

(7) The department shall issue renewal identification cards to an MRT or LMRT who complies with paragraph (4) of this subsection [but who fails to complete the continuing education requirements for recertification as set out in §143.11 of this title. The renewal identification cards shall expire 120 days after the last day of the MRT's or LMRT's birth month. If the deficiency is corrected and proof of completion of the continuing education requirements is sent to the department within the 120-day period, the department shall issue a renewal identification card which expires on the last day of the MRT's or LMRT's next birth month plus one year. An MRT or LMRT who does not correct the deficiency within 120 days shall not be allowed to extend or renew the certificate].

(8) - (9) (No change.)

(e) Renewal for retired medical radiologic technologists performing voluntary charity care.

(1) A "retired medical radiologic technologist" is defined as a person who:

(A) is above the age of 55;

(B) is not employed for compensation in the practice of medical radiology; and

(C) has notified the department in writing of his or her intention to retire and provide only voluntary charity care.

(2) "Voluntary charity care" for the purposes of this subsection is defined as the practice of medical radiology by a retired medical radiologic technologist without compensation or expectation of compensation.

(3) A retired medical radiologic technologist providing only voluntary charity care may renew his or her license by submitting a renewal form; the retired medical radiologic technologist renewal fee required by §143.4 of this title (relating to Fees); and the continuing education hours required by §143.11 of this title (relating to Continuing Education Requirements).

(f) [~~(e)~~] Late renewals.

(1) A person whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal form, proof of the continuing education taken, [~~completed continuing education report forms including supporting documentation (if required),~~] and the late renewal fee. An active annual registration or credential card issued by the American Registry of Radiologic Technologists does [~~not~~] constitute supporting documentation. A certificate issued under this subsection shall expire two years from the date the previous certificate expired[~~, not including a 120-day certificate issued in accordance with subsection (d)(7) of this section~~].

(A) If the certificate has been expired for 90 days or less, a person may renew the certificate by paying the one to 90-day late renewal fee.

(B) If the certificate has been expired for over 90 days but not more than one year, a person may renew the certificate by paying the 91-day to one-year late renewal fee.

(C) A person must comply with the continuing education requirements for renewal as set out in §143.11 of this title before the late renewal is effective. [~~A person is not eligible for a 120-day certificate as described in subsection (d)(7) of this section.~~]

(2) The late renewal is effective if it is mailed to the department or personally delivered by the MRT or LMRT or his/her agent to the department not more than one year after certificate expiration. If mailed, the postmark date shall be considered the date of mailing. A postage metered date is not considered as a postmark. A certificate not renewed within one year after expiration cannot be renewed.

(3) A person whose certificate has expired may not administer a radiologic procedure during the one-year period in violation of the Act. A person may not use a title that implies certification while the certificate is expired.

(4) A person whose certificate has been expired for more than one year may apply for another certificate by meeting the then-current requirements of the Act and this chapter which apply to all new applicants.

(g) [~~(f)~~] Expired certificates. The department, using the last address known, shall attempt to inform each MRT or LMRT who has not timely renewed a certificate, after a period of more than 10 days after the expiration of the certificate that the certificate has automatically expired. A person whose certificate automatically expires is required to surrender the certificate and identification cards to the department.

(h) [~~(g)~~] Active duty. If an MRT or LMRT is called to or on active duty with the armed forces of the United States and so long as the MRT or LMRT does not administer a radiologic procedure in a setting outside of the active duty responsibilities during the time the MRT or LMRT is on active duty, the MRT or LMRT shall not be required to complete any continuing education activities during the renewal period in which the MRT or LMRT was on active duty.

(1) Renewal of the certificate may be requested by the MRT or LMRT, a spouse, or an individual having power of attorney from the MRT or LMRT. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) A copy of the official orders or other official military documentation showing that the MRT or LMRT was on active duty for any portion of the renewal period shall be filed with the department along with the renewal form.

(3) An affidavit stating that the MRT or LMRT has not administered a radiologic procedure in a setting outside of the MRT or LMRT's active duty responsibilities during the time of active duty shall be filed with the department along with the renewal form. The affidavit may be executed by the MRT or LMRT, a spouse, or an individual having power of attorney from the MRT or LMRT.

(4) A copy of the power of attorney from the MRT or LMRT shall be filed with the department along with the renewal form if the individual having power of attorney executes any of the documents required by this subsection.

(5) A certificate covered by this subsection may be renewed in accordance with subsection (e) of this section. The 60-day late fee shall be waived for a renewal under this subsection.

(6) An MRT or LMRT on active duty with the United States armed forces serving outside the State of Texas may request renewal of the certificate at any time before or after the expiration of the certificate. An MRT or LMRT on active duty serving within the State of Texas may request renewal before the expiration of the certificate or under subsection (e) of this section. An MRT or LMRT on active duty serving within the State of Texas who does not renew under subsection (e) of this section may file a complete application for another certificate in accordance with §143.7(h) of this title.

§143.11. Continuing Education Requirements.

(a) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period beginning on the first day of the month following each MRT's or LMRT's birth month and ending on the last day of each MRT's or LMRT's birth month two years thereafter.

(1) - (4) (No change.)

(5) At least 3 hours [~~50%~~] of the required number of hours shall be satisfied by attendance and participation in instructor-directed activities.

(6) No more than 21 hours for MRTs or 9 hours for LMRTs [~~50%~~] of the required number of hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, or a combination thereof which meet the requirements set out in subsection (d) of this section.

(7) (No change.)

(8) An MRT or LMRT who holds a current and active annual registration or credential card issued by the American Registry of Radiologic Technologists (ARRT) indicating that the MRT is in good

standing and not on probation satisfies the continuing education requirement for renewal of the general or limited certificate provided the hours accepted by the agency or organization which issued the card were completed during the MRT's biennial renewal period [not more than one year prior to the expiration of the MRT or LMRT certificate] and meet or exceed the requirements set out in paragraph (5) of this subsection [section] and subsection (b) of this section. The department shall be able to verify the status of the card presented by the MRT or LMRT electronically or by other means acceptable to the department. The department may review documentation of the continuing education activities in accordance with subsection (e) of this section.

(9) - (10) (No change.)

(b) (No change.)

(c) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and:

(1) - (2) (No change.)

(3) is an educational activity which meets the following criteria:

(A) (No change.)

(B) is approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations, or offered by a federal, state, or local governmental entity. [A list is available from the department upon request.]

(d) (No change.)

(e) Reporting of continuing education. [Each MRT or LMRT is responsible for and shall complete and file with the department at the time of renewal or to be considered for renewal when in an extension, a continuing education report form approved by the department listing the title, date and number of hours for each activity for which credit is claimed. In the alternative,] A [a] technologist may request an exemption as set out in subsection (i) of this section or may submit a copy of the technologist's current and active annual registration or credential card indicating that the technologist is in good standing and not on probation in accordance with subsection (a)(8) of this section, with a signed statement that the technologist completed during the MRT's biennial renewal period at least 50% of the required number of hours of continuing education directly related to the performance of a procedure utilizing ionizing radiation for medical purposes and that no more than 21 hours for MRTs and 9 hours for LMRTs [50%] of the required number of hours shall be verifiable independent self-study activities.

(1) - (2) (No change.)

[(3) If the department determines that the technologist failed to successfully complete the continuing education requirements, the technologist shall be granted a 120-day extension period in which to complete the continuing education hours needed to fulfill the requirements.]

(f) - (g) (No change.)

(h) Failure to complete the required continuing education.

[(1) An MRT or LMRT who has failed to complete the requirements for continuing education may be granted a 120-day certificate as described in §143.10(d)(7) of this title. The 120-day extension is the maximum that shall be granted and there will be no exceptions, nor may an additional extension period be granted.]

[(2) The next continuing education reporting period shall commence on the day following the completion of continuing education credits to correct the deficiency and shall end two years from the date the previous renewal period ended. The extension period is borrowed from the next reporting period.]

[(3) An MRT or LMRT who has not corrected the deficiency by the expiration date of the 120-day certificate shall be considered as noncompliant with the renewal requirements and may no longer perform radiologic procedures under the expired certificate.]

[(4)] A person may renew late under §143.10(f) [(e)] of this title after all the continuing education requirements have been met. [A person who renews late is not eligible for a 120-day extension.]

(i) - (j) (No change.)

(k) Denial of request for exemption. A technologist whose request for exemption is denied by the department [may be granted a 120-day extension to complete the continuing education requirements and] may request a hearing on the denial within 30 days after the date the department notified the technologist of the exemption denial. If no hearing is requested in writing within 30 days, the opportunity for hearing shall be waived.

(l) (No change.)

§143.12. Changes of Name and Address.

(a) (No change.)

(b) Notification of address changes shall be made in writing including the name, mailing address, and zip code [codes,] and be mailed to the department [administrator].

(c) Before any certificate and identification cards will be issued by the department, notification of name changes must be mailed to the department [administrator] and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The certificate holder shall submit a certified check or money order for the replacement fee, as set out in §143.4 of this title. Upon receipt of the new certificate and identification cards, the MRT or LMRT shall return the previously issued certificate and cards immediately to the department. If those items have been lost, destroyed, or are not available to return, a statement detailing the loss or destruction must be signed and submitted to the department.

§143.13. Certifying Persons with Criminal Backgrounds.

(a) Criminal convictions which directly relate to the profession of radiology.

(1) The department may suspend or revoke any existing certificate, disqualify a person from receiving any certificate, or deny to a person the opportunity to be examined for a certificate if the person is convicted of, enters a plea of nolo contendere or guilty to a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a MRT, NCT or LMRT.

(2) In considering whether a pleading of nolo contendere or a criminal conviction directly relates to the occupation of an MRT, NCT or LMRT, the department shall consider:

(A) (No change.)

(B) the relationship of the crime to the purposes for certification. The following felonies and misdemeanors relate to any certificate because these criminal offenses indicate an inability or a tendency to be unable to perform as an MRT, NCT or LMRT:

(i) the misdemeanor of knowingly or intentionally acting as an MRT, NCT or LMRT without a certificate under the Medical Radiologic Technologist Certification Act (the Act);

(ii) - (iii) (No change.)

(C) (No change.)

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of an MRT, NCT or LMRT. In making this determination, the department will apply the criteria outlined in Texas Occupations Code, Chapter 53, the legal authority for the provisions of this section.

(3) (No change.)

(b) (No change.)

§143.14. Disciplinary Actions.

(a) (No change.)

(b) The department may take disciplinary action against a person subject to the Act for:

(1) - (6) (No change.)

(7) failing to report to the department the violation of the Act or any allegations of sexual misconduct by another person;

(8) - (11) (No change.)

(c) Engaging in unprofessional conduct means the following:

(1) - (33) (No change.)

(34) engaging in sexual conduct in the workplace. A MRT, LMRT, NCT or a temporary certificate holder shall not engage in sexual conduct with a client, patient, co-worker, employee, staff member, contract employee, MRT, LMRT, NCT or temporary certificate holder on the premises of any job establishment. For the purposes of this section, sexual conduct includes:

(A) any touching of any part of the genitalia or anus;

(B) any touching of the breasts of a female except as necessary for the performance of a radiologic procedure as defined in §143.2 of this title (relating to Definitions);

(C) any offer or agreement to engage in any activity described in this subsection;

(D) kissing without the consent of both persons;

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion of prostitution as described in the Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in any such activities;

(F) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual; or

(G) inappropriate sexual comments, including making sexual comments about a person's body.

(d) - (k) (No change.)

§143.15. Advertising or Competitive Bidding.

(a) - (c) (No change.)

(d) When an assumed name is used in a person's practice as a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician the legal name or certificate number of the medical radiologic technologist, limited medical radiologic technologist, or non-certified technician must be listed in conjunction with the assumed name. An assumed name used by a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician must not be false, misleading, or deceptive.

(e) - (k) (No change.)

§143.16. Dangerous or Hazardous Procedures.

(a) - (b) (No change.)

(c) Hazardous procedures. Unless otherwise noted, the list of hazardous procedures which may only be performed by a practitioner or MRT are:

(1) - (2) (No change.)

(3) portable x-ray equipment [~~mobile radiography~~];

(4) - (10) (No change.)

(d) - (f) (No change.)

(g) Mammography. In accordance with the Health and Safety Code, §401.421 et seq, mammography is a radiologic procedure which may only be performed by an MRT who meets the qualifications set out in Chapter 289 [~~§289.230(f)(2)~~] of the Radiation Control rules relating to mammography [~~this title (relating to Mammography)~~]. Mammography shall not be performed by [~~a practitioner,~~] an LMRT, an NCT, or any other person.

(h) Prohibited act. A person who performs a dangerous or hazardous procedure in violation of the Act, §601.402(b) [~~§2.13(a)(1)~~] commits a Class B misdemeanor, punishable by up to 180 days in jail or a fine up to $2,000, or both.

(i) An RN or physician assistant must be trained under §143.17 of this title or §143.20 of this title, or have been approved to perform radiologic procedures under a hardship exemption granted under §143.19 of this title (relating to Hardship Exemptions), in addition to performing the listed procedure under the direction and supervision of a practitioner. Subsections (b)(6), [~~and~~] (c)(8), and (c)(9) of this section shall not be construed to authorize an RN or physician assistant to independently perform fluoroscopy, fluorography or procedures utilizing contrast media.

(j) Student performance of dangerous or hazardous procedures. The procedures identified in this section are not considered dangerous and hazardous for purposes of §601.056(a) [~~§2.05(g)~~] of the Act if the person performing the procedures is a student enrolled in a program which meets the minimum standards adopted under §601.056 [~~§2.05~~] of the Act and if the person is performing radiologic procedures in an academic or clinical setting as part of the program. Therefore, such students may perform these procedures in such settings. Students may not perform procedures in an employment setting.

§143.17. Mandatory Training Programs for Non-Certified Technicians.

(a) General. This section sets out the minimum standards for approval of mandatory training programs, as required by the Medical Radiologic Technologist Certification Act (Act), §601.201 [~~§2.05(f)~~], which are intended to train individuals to perform radiologic procedures which have not been identified as dangerous or hazardous. Individuals who complete an approved training program may not use that training toward the educational requirements for a general or limited certificate as set out in §143.7 of this title (relating to Types of Certificates and Applicant Eligibility). Before a person performs a radiologic procedure, the person must complete all the hours in subsection (d)(2)(A)-(C) [~~(d)(1)(A)-(D)~~] of this section, and at least one unit in subsection (d)(3)(A)-(G) [~~(d)(2)(A)-(G)~~] or (d)(4) of this section.

(b) - (i) (No change.)

§143.18. Registry of Non-Certified Technicians.

(a) - (b) (No change.)

(c) Initial placement on the registry. In order to be listed on the registry for the first time, the information described in subsection (b) of this section shall be reported to the department by the training program approved under §143.17 or §143.20 of this title after the person's successful completion of the training. A person who has completed all the

training program through previously completed courses in accordance with §143.17(d) of this title may apply directly to the department within two years of completion of the course to be placed on the registry upon receipt of an application and required fee.

(d) Renewal of registration.

(1) Each person on the registry shall be responsible for renewing his or her status on the registry prior to the expiration date [~~between January 1 and March 1 of each year~~].

(2) The department shall send a renewal notice to each registrant at least 60 days before the expiration date [~~the address indicated on the registry by December 1 of each year~~]. The department is not responsible for lost, misdirected, undeliverable or misplaced mail.

(3) The renewal is effective if the official renewal form is postmarked or delivered to the department on or before the expiration date of the registrant's certificate [~~March 1 of the renewal year~~]. The renewal form shall include, at a minimum, the person's name, [~~social security number,~~] current mailing address, and current place of employment. [~~The renewal form shall also include the current date and the signature of the renewal applicant.~~]

(4) Failure to submit the renewal form by the expiration date [~~deadline~~] will result in the removal of the person's name from the registry.

(5) A person whose name is removed from the registry due to failure to renew may be relisted on the registry by submitting a late renewal form and fee to the department within one year of the expiration date of registrant's certificate. If renewal is not complete within one year, the person may not renew; but must reapply and meet current requirements.

(e) - (f) (No change.)

(g) Employer responsibility. If a person performing radiologic procedures is not a [~~an~~] medical radiologic technologist, limited medical radiologic technologist or is not registered under this section, the employer shall be responsible for determining whether the person performing radiologic procedures is in compliance with §143.17 or §143.20 of this title. This subsection does not apply to a hospital, federally qualified health center, or practitioner granted a hardship exemption by the department within the previous 12-month period.

(h) (No change.)

§143.19. Hardship Exemptions.

(a) (No change.)

(b) Required application materials.

(1) - (4) (No change.)

(5) The application shall be accompanied by one or more of the following:

(A) - (G) (No change.)

(H) if the applicant uses only a hand-held fluoroscope with a maximum operating capability of 65 kilovolts and 1 milliampere, or a similar type of x-ray unit for imaging upper extremities only, at the location indicated on the application form and the applicant believes that the radiation produced by the radiographic equipment represents a minimal threat to the patient and the operator of the equipment, the following is required to be submitted:

(i) (No change.)

(ii) a sworn affidavit describing the equipment used; the types of radiographs performed; the training completed by the operator of the equipment within the 24-month period prior to application or reapplication for a hardship exemption; the date(s) the training was completed by the operator; the radiation safety measures taken for the patient, operator and others; the level or amount of supervision provided by an MRT or a practitioner(s) to the operator while performing the radiographic procedure; and the equipment manufacturer's specifications for the diagnostic radiographic equipment utilized at the location indicated on the application form, including the maximum operating capability. [~~;~~]

[~~(I) if the applicant employs for the purpose of performing radiologic procedures, a person who is registered to take the Texas Medical Association's/Texas Osteopathic Medical Association's Physician's Training program for X-ray Operators approved by the department under §143.20 of this title, a sworn affidavit including justification for application under one of the requirements described in paragraph (5)(A)-(I) of this subsection. The following items must be submitted:~~]

[~~*(i)* the name(s), date of birth and social security number of the person(s) who will perform radiologic procedures pursuant to this hardship exemption;~~]

[~~*(ii)* the name of the facility where the training program will be taken, the date the program will begin and the anticipated date of completion;~~]

[~~*(iii)* the name(s) of the certified medical radiologic technologist instructor meeting the requirements set out in §143.17(c) of this title;~~]

[~~*(iv)* the name(s) of the company and the name of the person(s) who will be the designated equipment applications specialist knowledgeable of the specific equipment to be utilized; and~~]

[~~*(v)* a list of the anatomical categories to be included in the training.~~]

(6) - (7) (No change.)

(c) Application approval.

(1) The department [~~administrator~~] shall be responsible for reviewing all applications. The department [~~administrator~~] shall approve any application which is in compliance with this section and which properly documents applicant eligibility.

(2) (No change.)

(d) Disapproved applications.

(1) (No change.)

(2) If the department [~~administrator~~] determines that the application should not be approved, the department [~~administrator~~] shall give the applicant written notice of the reason for the disapproval. The applicant may appeal the decision to the department [~~associate commissioner over the administrator~~] by submitting a written request within ten days after receipt of the written notice of the reason(s) for the disapproval.

(3) Based upon the application and any additional information submitted by the applicant, [~~or~~] the department [~~administrator, the associate commissioner~~] shall approve or disapprove the application.

(4) (No change.)

(e) - (f) (No change.)

§143.20. Alternate Training Requirements.

(a) - (e) (No change.)

[~~(f) Training requirements for an x-ray equipment operator in a physician's office.~~]

[(1) In order to successfully complete a program, an x-ray equipment operator in a physician's office must complete the Texas Medical Association's/Texas Osteopathic Medical Association's Physician's Training Program for X-ray Operators.]

[(2) Successful completion of the x-ray operators training program allows the x-ray operator to perform radiologic procedures only under the instruction or direction of a physician.]

(f) [(g)] Application procedures for training programs. The [Texas] Department of State Health Services (department) shall use the same process as described in §143.17(e) of this title.

(g) [(h)] Application materials. The department shall require the same materials as described in §143.17(f) of this title.

(h) [(i)] Application approval. The department shall use the same process as described in §143.17(g) of this title.

(i) [(j)] Application processing. The department shall use the same process as described in §143.17(h) of this title.

(j) [(k)] Renewal. The department shall use the same process as described in §143.17(i) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601571
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 25. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION AND CERTIFICATION

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §25.9 and §25.62.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to refer to more recent laboratory accreditation standards adopted by the National Environmental Laboratory Accreditation Conference (NELAC) and to expand the sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

SECTION BY SECTION DISCUSSION

Proposed §25.9, Standards for Environmental Testing Laboratory Accreditation, would replace the phrase "Chapters 3, 4, and 5, adopted July 2002, and Chapters 1, 2, and 6, adopted June 2003" with "approved June 2003" to refer to the most recent laboratory accreditation standards adopted by NELAC.

Proposed §25.62(d), Proficiency Test Sample Analyses, would replace the phrase "Proficiency test samples shall be purchased from a provider approved by the National Institute for Standards and Technology, if available" with "Proficiency test samples, if available, shall be purchased from a National Environmental Laboratory Accreditation Program-designated provider or a provider approved by the National Institute of Standards and Technology." The change would expand the number of potential sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are expected for the agency or other units of state and local government as a result of administration or enforcement of the proposed rules.

The proposed amendments update NELAC standards currently referenced in existing rules and expand the sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

Current §25.9 refers to standards approved by NELAC July 2002 and June 2003. The reference to NELAC standards adopted July 2002 is out-of-date. The proposed change brings the reference to NELAC standards up-to-date. There are no fiscal implications anticipated from this proposed change. Further, the change is necessary for the agency's accreditation program to be consistent with National Environmental Laboratory Accreditation Program standards, as required by Texas Water Code (TWC), §5.802.

Current §25.62 requires drinking water laboratories seeking or holding certifications issued by the commission to purchase proficiency test samples, if available, from providers approved by the National Institute of Standards and Technology. The proposed change allows these laboratories to purchase proficiency test samples from National Environmental Laboratory Accreditation Program- designated providers, as well as providers approved by the National Institute of Standards and Technology. There are no fiscal implications anticipated from this proposed change.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules would be compliance with state law and an expanded number of potential sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed rules for small or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking updates the agency's standards for accreditation and expands the number of potential sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission. Thus, these rules do not meet the definition of a "major environmental rule." These rules are not a major environmental rule and do not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225, the proposed rules do not exceed a standard set by federal law or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The proposed rules do not exceed a standard set by federal law nor exceed the requirement of a delegation agreement because there is no federal authority regarding laboratory accreditation.

These revisions do not adopt a rule solely under the general powers of the commission and do not exceed an express requirement of state law. The requirements that would be implemented through these rules are expressly defined under TWC, Chapter 5, Subchapter R, which requires the commission to enact rules governing the accreditation of environmental laboratories.

TAKINGS IMPACT ASSESSMENT

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to these proposed amendments because the proposed amendments are not a taking as defined in Chapter 2007, nor are they a constitutional taking of private real property. The purpose of the proposed amendments is to update NELAC standards currently referenced in existing rules.

Promulgation and enforcement of these proposed rules will not affect private real property, which is the subject of the rules, because the proposed amendments will neither restrict or limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The proposed rules only apply to environmental testing laboratories that submit data to the commission for use in its decisions. Property values will not be decreased because the proposed amendments will not limit the use of real property. Thus, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the proposal is not a rulemaking subject to the Texas Coastal Management Program (CMP) because the rulemaking is neither identified in 31 TAC §505.11, nor will it affect any action or authorization identified in §505.11. Therefore, the proposal is not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., April 24, 2006, and should reference Rule Project Number 2006-014-025-CE. Copies of the proposal may be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Stephen Stubbs, Compliance Support Division, at (512) 239-6343.

SUBCHAPTER B. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION

30 TAC §25.9

STATUTORY AUTHORITY

The amendment is proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and §5.802 and §5.805, which require the agency to adopt rules for the administration of the laboratory accreditation program.

The proposed amendment implements TWC, §§5.013, 5.103, 5.105, 5.802, and 5.805.

§25.9. Standards for Environmental Testing Laboratory Accreditation.

Accreditation must be based on an environmental testing laboratory's conformance to National Environmental Laboratory Accreditation Conference standards approved [~~, Chapters 3, 4, and 5, adopted July 2002, and Chapters 1, 2, and 6, adopted~~] June 2003 and the requirements of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601534

Stephanie Bergeron Perdue

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 23, 2006

For further information, please call: (512) 239-5017

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SUBCHAPTER C. ENVIRONMENTAL TESTING LABORATORY CERTIFICATION

30 TAC §25.62

STATUTORY AUTHORITY

The amendment is proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and §5.802 and §5.805, which require the agency to adopt rules for the administration of the laboratory accreditation program.

The proposed amendment implements TWC, §§5.013, 5.103, 5.105, 5.802, and 5.805.

§25.62. Proficiency Test Sample Analyses.

(a) - (c) (No change.)

(d) Proficiency test samples, if available, shall be purchased from a National Environmental Laboratory Accreditation Program-designated provider or a provider approved by the National Institute of [~~for~~] Standards and Technology [, ~~if available~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-5017

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CHAPTER 37. FINANCIAL ASSURANCE

The Texas Commission on Environmental Quality (commission) proposes amendments to §§37.271, 37.371, and 37.8011.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2131, 79th Legislature, 2005, amended Texas Health and Safety Code (THSC), Chapter 361, Subchapter C, by adding §361.0855 to allow political subdivisions or quasi governmental entities to rely on their own financial strength to demonstrate financial assurance. Under prior law, a municipality that owned a municipal solid waste (MSW) landfill could satisfy the requirements to demonstrate financial assurance by using a local government financial test; however, other political subdivisions, such as local government corporations and conservation and reclamation districts, could not.

SECTION BY SECTION DISCUSSION

Administrative changes are proposed throughout the rules to be consistent with Texas Register requirements and agency guidelines.

The proposed amendment to §37.271, Local Government Financial Test, expands the types of bonds that can be used by MSW landfills to pass the local government financial test. Bonds that can be used to pass the local government financial test now include revenue bonds and certificates of obligation as well as general obligation bonds.

The proposed amendment to §37.371, Local Government Financial Test, adds revenue bonds and certificates of obligation to the letter signed by the local government's chief financial officer required as part of the local government financial test.

The proposed amendment to §37.8011, Definitions, expands the definition of "Local government" by adding a phrase that clarifies that local government includes both a local government corporation created under Texas Transportation Code, Chapter 431, to act on behalf of local government and a conservation and reclamation district created under Texas Constitution, Article XVI, §59. The proposed amendment also adds the definition of "Bonds." To make the definition section easier to read, the commission proposes to divide the section into paragraph (1) for "Local government" and paragraph (2) for "Bonds."

The commission is not recommending any change to Chapter 37 to incorporate THSC, §361.0855 statutory requirements that a local government pass a financial test, demonstrate that its outstanding bonds be unsecured, and meet a minimum rating because these requirements already exist under §37.271.

The commission proposes no change to the rules related to the language about the submission of a local government's demonstration of financial assurance. The requirement under THSC, §361.0855, that a local government must demonstrate financial assurance under this section before the initial receipt of waste is covered under §37.31, which requires that a financial assurance mechanism must be in effect before the initial receipt of waste. The requirement under THSC, §361.0855, that a local government must demonstrate financial assurance under this section as soon as practicable for operating facilities does not need to be included in the proposed rules because all facilities operating on the effective date of THSC, §361.0855, are required to provide financial assurance under existing state and federal requirements.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period the proposed amendments are in effect, no fiscal implications are anticipated for the agency. However, the proposed rules are anticipated to result in cost savings for some local government corporations and conservation and reclamation districts.

The proposed rules implement HB 2131 by providing an additional financial assurance mechanism for local government corporations and conservation and reclamation districts that own or operate MSW landfills. The proposed rules broaden the definition of "Local government" and thus allow local government corporations and conservation and reclamation districts to rely on their own financial strength to demonstrate financial assurance for MSW landfills.

At this time, there are six permitted MSW facilities that are owned or operated by a local government corporation or a conservation and reclamation district. These facilities could see annual savings for fees currently paid to provide financial assurance instruments. The annual fees of financial instruments are generally 1% - 3% of the total estimated costs for closure, post closure, and any corrective action activities for the facility. The current financial assurance required for the six affected facilities is estimated to be $15,992,969. Cost savings in annual fees spent by the six facilities for financial assurance instruments is estimated to be between $160,000 - $480,000. No fiscal implications are anticipated for the agency to implement the proposed rules.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the proposed rule changes will be compliance with state law.

The proposed amendments provide an additional financial assurance option for political subdivisions or quasi-governmental entities and are therefore not expected to have fiscal implications for businesses that own or operate MSW landfills.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The proposed amendments provide an additional financial assurance option for political subdivisions or quasi-governmental entities and are therefore not expected to have fiscal implications for small or micro-businesses that own or operate MSW landfills.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule that is specifically intended to protect the environment or to reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 37 are intended to implement new legislation to allow certain governmental entities other methods to meet financial assurance requirements. In fact, the rulemaking revises the commission's rules in a manner that could provide a benefit to the economy while maintaining the same level of protection of the environment and public health and safety. Because the existing rules require financial assurance for protection of human health and the environment, this rulemaking does not decrease the protection of the environment or human health.

The 79th Legislature passed HB 2131, which amended THSC, Chapter 361, Subchapter C, by adding §361.0855. The law expands the definitions of "Bonds" and "Local governments" in relation to MSW landfills owned and operated by local governments using a financial test for financial assurance. Under prior law, a municipality that owned an MSW landfill could satisfy the requirements to demonstrate financial assurance by using a local government financial test; however, it did not state whether other political subdivisions, such as local government corporations and conservation and reclamation districts, could demonstrate financial assurance in this same manner. In order to implement HB 2131, the proposed rulemaking expands the definition of "Local government" to include these political subdivisions, making them eligible to use a local government financial test to demonstrate financial assurance and defining the types of bonds that may be used as part of the local government financial test. Therefore, it is not anticipated that the rulemaking will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In fact, the changes should benefit the economy and productivity by producing annual savings for fees currently paid to provide financial assurance instruments. The commission concludes that the rulemaking does not meet the definition of a major environmental rule.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 37 do not meet any of these criteria. First, federal authority (40 Code of Federal Regulations (CFR) Part 258, Subpart G) on the issue of financial assurance has been delegated to the state, and the Texas Legislature has enacted statutes that are consistent with the federal requirements. Both state and federal statutes require financial assurance for MSW facilities (THSC, §361.085(e) and §361.0855, and 40 CFR Part 258). The proposed amendments to Chapter 37 are intended to implement new legislation to allow certain governmental entities other methods to meet financial assurance requirements. Therefore, the proposed rulemaking does not exceed a standard set by federal regulations because the rules implement new state statutes that are consistent with the federal regulations. Second, the proposed rulemaking carries out the general state statutes that require financial assurance, and does not exceed an express requirement of state law. Third, this proposal does not exceed the requirements of a delegation agreement between the state and an agency of the federal government to implement a state or federal program. The proposed amendments are consistent with the corresponding federal financial assurance requirements. Fourth, the commission proposes these amendments under new specific state law, in THSC, §361.0855. Therefore, the commission does not propose the amendments solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for these proposed rules in accordance with Texas Government Code, Chapter 2007. The principal intent of this proposal is to amend Chapter 37 to meet new statutory requirements by revising and clarifying sections relating to financial assurance requirements.

This proposal implements THSC, §361.0855, which was created by HB 2131. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rulemaking because the proposal is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Chapter 37 implements the state requirements found in THSC, §361.085 and §361.0855.

Nevertheless, the commission further evaluated the proposed rulemaking and performed a preliminary assessment of whether the proposed rulemaking constitutes a takings under Texas Government Code, Chapter 2007. Promulgation and enforcement of the proposed amendments would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed rules will not burden private real property, restrict or limit the owner's right to property, or reduce its value by 25% or more beyond what will otherwise exist in

the absence of these regulations. Rather, the proposed amendments only revise and clarify financial assurance requirements. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-075-037-AS. Comments must be received by 5:00 p.m., April 24, 2006. For further information, please contact Rob Norris, Revenue Section, at (512) 239-6239.

SUBCHAPTER C. FINANCIAL ASSURANCE MECHANISMS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

30 TAC §37.271

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of the state. The amendment is also proposed under THSC, Texas Solid Waste Disposal Act, §361.011, which provides the commission with the authority to manage municipal solid waste; §361.024, which provides the commission with the authority to adopt rules necessary to carry out its power and duties, and to establish standards of operation for the management of solid waste; and §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste and permitted facilities. Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under the laws of Texas and to establish and approve all general policy of the commission.

The amendment is also proposed in accordance with THSC, §361.0855, implementing HB 2131, 79th Legislature, 2005.

§37.271. Local Government Financial Test.

An owner or operator may satisfy the requirements of financial assurance for closure, post closure, or corrective action by establishing a local government financial test or a local government financial test and local government guarantee, which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements; and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action). An owner or operator who satisfies the requirements of paragraphs (1) - (3) [~~(1), (2), and (3)~~] of this section may demonstrate financial assurance up to the amount specified in paragraph (4) of this section.

(1) In order to satisfy the financial component of the test, the owner or operator must meet the criteria of either subparagraph (A) or (B) of this paragraph and in addition must meet certain general conditions outlined in subparagraph (C) of this paragraph.

(A) The owner or operator must satisfy each of the following financial ratios based on its [~~it's~~] most recent audited annual financial statement:

(i) - (ii) (No change.)

(B) If the owner or operator:

(i) of a facility other than a municipal solid waste landfill has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, those bonds must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(ii) of a municipal solid waste landfill subject to Chapter 330 of this title (relating to Municipal Solid Waste) has bonds as defined in Subchapter R of this chapter (relating to Financial Assurance for Municipal Solid Waste Facilities) and those bonds are not secured by insurance, a letter of credit, or other collateral or guarantee, those bonds must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such financial obligations.

[~~(B) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A or BBB, as issued by Standard and Poor's on all such general obligation bonds.~~]

(C) (No change.)

(D) The following terms used in this section are defined as follows.

(i) - (iii) (No change.)

(iv) Cash and current investments is the sum of "Cash," "Cash Equivalents" (e.g., bank deposits, very short-term debt securities, money market funds), and "Current Investments" (e.g., interest or dividend bearing securities that are expected to be held for less than one year), in the General Fund, Special Revenue Funds, Debt Service Fund, Enterprise Funds, and Internal Service Funds, as reported on the Comprehensive Annual Financial Report's (CAFR) Combined Balance Sheet. Note that cash, cash equivalents, and current investments are included in this term even if they are: pooled; with a fiscal agent; or restricted, provided that the assets belong to the General Fund, Special Revenue Funds, Debt Service Fund, Enterprise Funds, and Internal Service Funds. Specifically excluded from this definition are accounts receivable, retirement assets, real property, fixed assets, and other non-current assets, as well as any assets (including cash) in Capital Project Funds. [~~; and~~]

(v) (No change.)

(2) In order to satisfy the public notice component of the test, the local government owner or operator must place a reference to the closure, post closure, or corrective action costs assured through the financial test into its next CAFR after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure, post closure, or corrective action requirements; the reported liability at the balance sheet date; the estimated total closure or post closure cost remaining to be recognized; the percentage of landfill capacity used to date; and the estimated landfill life in years. A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with

the requirements of §330.415 [~~§330.238~~] of this title (relating to Implementation of the Corrective Action Program). For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with the public notice component.

(3) (No change.)

(4) The portion of the closure, post closure, or corrective action costs for which an owner or operator can assure under this paragraph is determined as follows.

(A) (No change.)

(B) If the local government owner or operator assures other environmental obligations through a financial test, including, but not limited to, those associated with hazardous waste treatment, storage, and disposal facilities under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) and 40 Code of Federal Regulations (CFR) Parts 264 and 265, petroleum underground storage tank facilities under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 280, underground injection control facilities under Chapter 331 of this title (relating to Underground Injection Control) and 40 CFR §144.62 [~~144.62~~], polychlorinated biphenyl storage facilities under 40 CFR Part 761, it must add those costs to the closure, post closure, or corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43% of the local government's total annual revenue.

(5) (No change.)

(6) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of paragraphs (1) - (4) [~~(1), (2), (3), and (4)~~] of this section, the local government must send notice to the executive director of intent to establish alternate financial assurance. This notice must be sent within 90 days after the end of the fiscal year for which the year-end financial data shows that the local government no longer meets the requirements. The local government must provide alternate financial assurance within 120 days after the end of such fiscal year.

(7) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200601526
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-0348

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SUBCHAPTER D. WORDING OF THE MECHANISMS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

30 TAC §37.371

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of the state. The amendment is also proposed under THSC, Texas Solid Waste Disposal Act, §361.011, which provides the commission with the authority to manage municipal solid waste; §361.024, which provides the commission with the authority to adopt rules necessary to carry out its power and duties, and to establish standards of operation for the management of solid waste; and §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste and permitted facilities. Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under the laws of Texas and to establish and approve all general policy of the commission.

The amendment is also proposed in accordance with THSC, §361.0855, implementing HB 2131, 79th Legislature, 2005.

§37.371. Local Government Financial Test.

A letter signed by the local government's chief financial officer, as specified in §37.271 of this title (relating to Local Government Financial Test) must be worded as specified in the Local Government Financial Test in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.371

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-0348

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SUBCHAPTER R. FINANCIAL ASSURANCE FOR MUNICIPAL SOLID WASTE FACILITIES

30 TAC §37.8011

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of the state. The amendment is also proposed under THSC, Texas Solid Waste Disposal Act, §361.011, which provides the commission with the authority to manage municipal solid waste; §361.024, which provides the commission with the authority to adopt rules necessary to carry out its power and duties, and to establish standards of operation for the management of solid waste; and §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste and permitted facilities. Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under the laws of Texas and to establish and approve all general policy of the commission.

The amendment is also proposed in accordance with THSC, §361.0855, implementing HB 2131, 79th Legislature, 2005.

§37.8011. Definitions.

Definitions for terms that appear throughout this subchapter may be found in this section, in Subchapter A of this chapter (relating to General Financial Assurance Requirements), as well as Chapter 330 of this title (relating to Municipal Solid Waste).

(1) Local government--A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of these listed [~~the foregoing~~] entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over solid waste management; a local government corporation created under Texas Transportation Code, Chapter 431, to act on behalf of a local government; or a conservation and reclamation district created under Texas Constitution, Article XVI, §59. This definition includes a special district created under state law.

(2) Bonds--Financial obligations issued by a local government, including general obligation bonds, revenue bonds, and certificates of obligation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601528
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-0348

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SUBCHAPTER W. FINANCIAL ASSURANCE FOR QUARRIES

30 TAC §§37.9160, 37.9165, 37.9170, 37.9175, 37.9180, 37.9185, 37.9190, 37.9195, 37.9200, 37.9205, 37.9210, 37.9215, 37.9220, 37.9225, 37.9230, 37.9235, 37.9240

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §§37.9160, 37.9165, 37.9170, 37.9175, 37.9180, 37.9185, 37.9190, 37.9195, 37.9200, 37.9205, 37.9210, 37.9215, 37.9220, 37.9225, 37.9230, 37.9235, and 37.9240.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 1354, 79th Legislature, 2005, amended Texas Water Code (TWC), Chapter 26, by adding new Subchapter M, Water Quality Protection Areas; specifically §§26.551 - 26.562. The statute addresses permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation with regard to quarry operations. The requirements of the statute are applicable to a pilot program in the John Graves Scenic Riverway, a stretch of the Brazos River watershed downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir, and extending to the county line between Parker and Hood Counties.

Chapter 37, new Subchapter W, implements §26.553(f)(2) and §26.554. Subchapter W establishes financial assurance requirements for the John Graves Scenic Riverway pilot program. The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of reclamation and restoration associated with quarries. Financial assurance is important for two reasons. First, it assures environmental needs related to quarries and the John Graves Scenic Riverway will be addressed using funds arranged by the responsible party. Second, it prevents delays in addressing environmental needs by assuring funds that are readily available.

A corresponding rulemaking is published in this issue of the *Texas Register* that includes the addition of new Subchapter H, Regulation of Quarries in the John Graves Scenic Riverway to 30 TAC Chapter 311, Watershed Protection.

SECTION BY SECTION DISCUSSION

New Subchapter W is proposed to be added to Chapter 37 to provide financial assurance requirements relating to reclamation and restoration related to quarries in the John Graves Scenic Riverway. The new subchapter also outlines the administrative procedures and requirements relating to these types of financial assurance. It is intended to be used in coordination with provisions of Chapter 311 and with certain provisions of Chapter 37, Subchapters A and B.

Proposed new §37.9160, Applicability, identifies who is subject to this subchapter and those entities that are exempt.

Proposed new §37.9165, Definitions, defines terms that are used throughout this subchapter.

Proposed new §37.9170, Financial Assurance Requirements for Reclamation and Restoration, indicates that owners and operators required to demonstrate financial assurance for reclamation or restoration must comply with certain general financial assurance requirements in Chapter 37, Subchapters A and B. Subsection (a)(1) - (4) outlines portions of Chapter 37, Subchapter B, that will not apply to owners and operators of quarries. Subsection (a)(4) specifies that §37.161 applies to quarry owners and operators, except that mechanism and wording requirements of a standby trust fund are found in this subchapter rather than Chapter 37, Subchapter B. Subsection (b) indicates that the amount of financial assurance must at least equal the current cost estimate. Required financial assurance amounts are further described in Chapter 311, Subchapter H. These amounts are reflective of the cost estimates referred to in this subchapter. Subsection (c) requires certain wordings for mechanisms and provides that the executive director will determine the acceptability of any mechanism submitted. The timing for providing the mechanism is described in subsection (d). For ease of administration and cost to the owner or operator, subsection (e) allows the use of a single financial assurance mechanism for both reclamation and restoration as long as the total mechanism amount is not less than the total required for each purpose. Continuous financial assurance until release by the executive director is provided for in subsection (f). Subsection (g) describes the conditions under which financial assurance mechanisms would be called upon. Finally, subsection (h) sets out the requirements for the standby trust agreement that must be established in conjunction with surety bonds and irrevocable letters of credit.

Proposed new §37.9175, Financial Assurance Mechanisms for Reclamation, allows the use of a trust agreement, a surety bond guaranteeing payment, an irrevocable standby letter of credit, insurance, a financial test, or a corporate guarantee as mechanisms for meeting financial assurance requirements for reclamation.

Proposed new §37.9180, Financial Assurance Mechanisms for Restoration, allows the use of a trust agreement, a surety bond guaranteeing payment, an irrevocable standby letter of credit, insurance, a financial test, or a corporate guarantee as mechanisms for meeting financial assurance requirements for restoration.

Proposed new §37.9185, Trust Fund Requirements, describes the requirements for a trust fund used to demonstrate financial assurance for reclamation or restoration.

Proposed new §37.9190, Trust Agreement Wording, describes the wording required for a trust agreement evidencing establishment of a trust fund.

Proposed new §37.9195, Surety Bond Guaranteeing Payment Requirements, describes the requirements for a payment surety bond used to demonstrate financial assurance for reclamation or restoration.

Proposed new §37.9200, Payment Bond Wording, describes the wording required for a payment surety bond used to demonstrate financial assurance for reclamation or restoration.

Proposed new §37.9205, Irrevocable Standby Letter of Credit Requirements, describes the requirements for a letter of credit used to demonstrate financial assurance for reclamation or restoration.

Proposed new §37.9210, Irrevocable Standby Letter of Credit Wording, describes the wording required for a letter of credit used to demonstrate financial assurance for reclamation or restoration.

Proposed new §37.9215, Insurance Requirements, describes the requirements for insurance used to demonstrate financial assurance for reclamation or restoration.

Proposed new §37.9220, Certificate of Insurance Wording, describes the wording required for a certificate of insurance used to demonstrate financial assurance for reclamation or restoration.

Proposed new §37.9225, Financial Test Requirements, describes the financial and reporting requirements for entities choosing to self-insure by using a financial test as a means of demonstrating financial assurance for reclamation or restoration.

Proposed new §37.9230, Financial Test Wording, describes the wording of the document that must be submitted by the chief financial officer of an entity choosing to use the financial test to demonstrate financial assurance for reclamation or restoration.

Proposed new §37.9235, Corporate Guarantee Requirements, describes the requirements for a higher tiered parent corporation choosing to use a corporate guarantee on behalf of a quarry owner or operator to demonstrate financial assurance for reclamation or restoration.

Proposed new §37.9240, Corporate Guarantee Wording, describes the wording required of a corporate guarantee used to demonstrate financial assurance for reclamation or restoration.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government. However, fiscal implications, which may be significant, are anticipated for up to 16 rock quarry facilities currently operating in the John Graves Scenic Riverway area.

The proposed rules implement SB 1354, which amended TWC, Chapter 26. The bill addresses permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation with regard to quarry operations in the John Graves Scenic Riverway. The John Graves Scenic Riverway is a stretch of the Brazos River watershed downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas. The rules would add new Subchapter W in Chapter 37. New Subchapter W would add financial assurance requirements relating to reclamation and restoration for quarries operating within the John Graves Scenic Riverway. The rules would require that the owner or operator of a quarry located in the John Graves Scenic Riverway establish and maintain financial assurance for the restoration of a water body that is affected by an unauthorized discharge. Ultimately, the costs of restoration would depend on the site-specific characteristics of the quarry, the release of pollutants, and the nature of the resulting impacts to the receiving water. The financial assurance would cover the costs of corrective action and restoration performed by an independent contractor and include design and engineering fees, costs of repairing failed or impaired structural controls, costs of soil stabilization and erosion control measures necessary to prevent additional releases, and where practicable, removal of excess silt, sediment, rocks, and debris from the affected water body. Facilities that would be required to obtain the new general permit under the proposed rules would be required to meet the financial assurance requirements for restoration activities.

The rules would also require that the owner or operator of a quarry located in the John Graves Scenic Riverway establish and maintain financial assurance for reclamation of the quarry. Ultimately, the costs of reclamation would depend on the site-specific characteristics of the quarry, topography, geology, and the proposed final land use. Costs of reclamation include design and engineering fees; removal or final stabilization of all materials, waste, structures, temporary roads/railroads, and equipment; backfilling, regrading, and recontouring; slope stabilization; and the establishment of vegetation, wildlife habitat, drainage patterns, and permanent control structures. The proposed rules would expire September 1, 2025, as required by SB 1354. Facilities that would be required to obtain the individual permit under the proposed rules would be required to meet the proposed financial assurance requirements for both reclamation and restoration activities.

The proposed rules would have no significant fiscal impact for the agency. A slight increase in the number of financial assurance mechanisms to review, track, and maintain is expected. The additional workload would be absorbed using current agency resources. It is projected that the rulemaking would result in no additional costs to other units of state and local government.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved water quality due to financial assurance that quarries that have unauthorized discharges would have funding for restoration costs for unauthorized discharges. The rulemaking would

also provide financial assurance that the quarries would have funding for reclamation of the site.

The rulemaking would require financial assurance to guarantee the restoration of the affected waterway in the event of an unauthorized discharge and for reclamation of the site once quarry operations cease. It is estimated that financial assurance would cost the affected quarries between 3% and 5% per year of the costs to restore and/or reclaim the site. It is estimated that, on average, cost estimates providing the basis for the amount of financial assurance required would be $100,000 for restoration and $200,000 for reclamation. Therefore, to meet minimum financial assurance requirements, it is estimated to cost between $3,000 and $15,000 per year. Reclamation is specific to sites located 200 to 1,500 feet from a navigable water body in the John Graves Scenic Riverway.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. A small business is defined as having fewer than 100 employees or less than $1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees. It is not known how many of the estimated 16 facilities are small or micro-businesses, but for those that are, there could be costs associated with the proposed financial assurance requirements.

Small or micro-businesses would be subject to the same requirements for compliance as larger businesses. Estimated costs would range from $3,000 to $15,000. Costs for a small business would range from $30 to $150 per employee. For a micro-business, costs could range from $150 to $750 per employee.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are intended to implement SB 1354, relating to the regulation of ongoing mining and quarrying within the newly created John Graves Scenic Riverway. The proposed rules in Chapter 37 would clarify financial assurance requirements for quarries located in the John Graves Scenic Riverway. The proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply clarify financial assurance requirements for quarries located in the John Graves Scenic Riverway. The proposed rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

Furthermore, the proposed rulemaking action does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements. First, the proposed rules are specifically required to implement SB 1354. Second, the proposed rules do not exceed a requirement of state law, because they are being proposed to implement SB 1354. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose these rules solely under the general powers of the agency, but rather under the authority of SB 1354, which directs the commission to implement rules under TWC, Chapter 26. These rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225.

The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary analysis of whether this action would constitute a takings under Texas Government Code, Chapter 2007. The proposed new rules in Chapter 37 clarify financial assurance requirements for quarries located in the John Graves Scenic Riverway. The promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rules will not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Mineral Wells on April 6, 2006, at 6:30 p.m. at the Mineral Wells City Hall Annex, Council Chambers, 115 Southwest First Street. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Public Assistance at (512) 239-4000. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-051-037-PR. Comments must be received no later than 5:00 p.m., April 24, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Kimberly Wilson, Water Quality Division, (512) 239-4644.

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §5.120, which states that the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 26, as amended by SB 1354, §2.

The proposed new rules implement SB 1354, which creates TWC, Chapter 26, new Subchapter M. SB 1354, §2, expressly requires the commission to adopt rules adequate to protect the water resources in a water quality protection area for inclusion in any authorization, including an individual or general permit.

§37.9160. Applicability.

This subchapter applies to an owner or operator required to provide financial assurance under Chapter 311 of this title (relating to Watershed Protection). This subchapter does not apply to state or federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States. This subchapter establishes requirements and mechanisms for demonstrating financial assurance for reclamation and restoration.

§37.9165. Definitions.

Definitions for terms that appear throughout this subchapter may be found in this section, in Subchapter A of this chapter (relating to General Financial Assurance Requirements), as well as Chapter 311, Subchapter H of this title (relating to Regulation of Quarries in the John Graves Scenic Riverway), except where the following terms are used in this subchapter, the following definition applies: Current cost estimate--The amount of financial assurance required under Chapter 311, Subchapter H of this title.

§37.9170. Financial Assurance Requirements for Reclamation and Restoration.

(a) In addition to the requirements of this subchapter, owners and operators required to demonstrate financial assurance for reclamation or restoration must comply with §§37.141, 37.151, and 37.161 of this title (relating to Increase in Current Cost Estimate, Decrease in Current Cost Estimate, and Establishment of a Standby Trust) and Subchapter A of this chapter (relating to General Financial Assurance Requirements), except:

(1) §37.21 of this title (relating to Wording and Approval of Mechanisms);

(2) §37.31 of this title (relating to Submission of Documents);

(3) §37.52 of this title (relating to Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas); and

(4) §37.161 of this title.

(b) The owner or operator of each facility required by this chapter to provide financial assurance for reclamation or restoration must establish financial assurance in an amount no less than the current cost estimate.

(c) The mechanisms submitted for compliance with this subchapter must be worded as they appear in this subchapter. The executive director shall determine the acceptability of the mechanisms submitted.

(d) An owner or operator required by this subchapter to provide financial assurance must submit an originally signed financial assurance mechanism with the application for a general or individual permit required under Chapter 311 of this title (relating to Watershed Protection). The signed financial assurance mechanism must be effective at the time it is submitted.

(e) Owners or operators may use a single financial assurance mechanism as specified in this subchapter for both reclamation and restoration. The amount of the funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each individual purpose.

(f) The owner or operator of a facility required by this subchapter to provide financial assurance for reclamation or restoration shall provide continuous financial assurance until the executive director provides written consent to terminate in accordance with §37.61 of this title (relating to Termination of Mechanisms).

(g) The executive director may call on the financial assurance mechanism(s) when an owner or operator who is required to comply with this chapter has:

(1) failed to perform reclamation or restoration when required;

(2) failed to provide an alternate financial assurance mechanism, when required; or

(3) failed to provide continuous financial assurance coverage.

(h) An owner or operator who uses a surety bond or an irrevocable letter of credit to satisfy the requirements of this subchapter shall establish a standby trust. The standby trust must meet the requirements of §37.161 of this title except that the wording of a standby trust agreement must follow §37.9190 of this title (relating to Trust Fund Wording) and the requirements indicated in §37.9185 of this title (relating to Trust Fund Requirements) rather than the citations reflected in §37.161 of this title.

§37.9175. Financial Assurance Mechanisms for Reclamation.

Owners and operators subject to this subchapter may use any of the following financial assurance mechanisms to demonstrate financial assurance for reclamation:

(1) a trust agreement as specified in §37.9185 of this title (relating to Trust Fund Requirements);

(2) a surety bond guaranteeing payment as specified in §37.9195 of this title (relating to Surety Bond Guaranteeing Payment Requirements);

(3) an irrevocable standby letter of credit as specified in §37.9205 of this title (relating to Irrevocable Standby Letter of Credit Requirements);

(4) insurance as specified in §37.9215 of this title (relating to Insurance Requirements);

(5) a financial test as specified in §37.9225 of this title (relating to Financial Test Requirements); or

(6) a corporate guarantee as specified in §37.9235 of this title (relating to Corporate Guarantee Requirements).

§37.9180. Financial Assurance Requirements for Restoration.

Owners and operators subject to this subchapter may use any of the following financial assurance mechanisms to demonstrate financial assurance for restoration:

(1) a trust agreement as specified in §37.9185 of this title (relating to Trust Fund Requirements);

(2) a surety bond guaranteeing payment as specified in §37.9195 of this title (relating to Surety Bond Guaranteeing Payment Requirements);

(3) an irrevocable standby letter of credit as specified in §37.9205 of this title (relating to Irrevocable Standby Letter of Credit Requirements);

(4) insurance as specified in §37.9215 of this title (relating to Insurance Requirements);

(5) a financial test as specified in §37.9225 of this title (relating to Financial Test Requirements); or

(6) a corporate guarantee as specified in §37.9235 of this title (relating to Corporate Guarantee Requirements).

§37.9185. Trust Fund Requirements.

(a) An owner or operator may satisfy the requirements of financial assurance by establishing a fully funded trust that conforms to the requirements of this subchapter and by submitting an originally signed duplicate of the executed trust agreement to the executive director.

(b) The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(c) The wording of the trust agreement must be identical to the wording specified in §37.9190(a) of this title (relating to Trust Agreement Wording), including a formal certification of acknowledgment as specified in §37.9190(b) of this title.

(d) Schedule A of the trust agreement as specified in §37.9190(a) of this title must be updated within 60 days after an approved change in the amount of the current cost estimate.

(e) A fully funded trust requires that the initial payment into the trust fund be at least equal to the current cost estimate, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the initial payment plus the amount of the combined mechanism(s) must be at least equal to the current cost estimate. A receipt from the trustee for the initial payment must be submitted by the owner or operator to the executive director with the originally signed duplicate of the trust agreement.

(f) After the initial payment for a fully funded trust, whenever the current cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 30 days after the change in the current cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or obtain an additional financial assurance mechanism as specified in this subchapter to cover the difference.

(g) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the executive director for release of the amount in excess of the current cost estimate.

(h) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (g) of this section, the executive director shall instruct the trustee to release to the owner or operator such funds as the executive director specifies in writing.

(i) An owner or operator or any other person authorized by the executive director to perform reclamation at the quarry or restoration related to the quarry, may request reimbursement expenditures for reclamation at the quarry or restoration related to the quarry by submitting itemized bills to the executive director. The request shall include an explanation of the expenses and all applicable itemized bills. The owner or operator may request reimbursements for partial reclamation or restoration only if sufficient funds are remaining in the trust fund to cover the maximum remaining costs for reclamation at the quarry or restoration related to the quarry. After receiving bills for reclamation or restoration activities, the executive director shall instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing, if the executive director determines that the partial or final reclamation or restoration expenditures are in accordance with the approved reclamation or restoration plan activities, or are otherwise justified. If the executive director has reason to believe that the cost of reclamation at the quarry or restoration related to the quarry will be greater than the value of the trust fund, the executive director may withhold reimbursement of such amounts as deemed prudent until it is determined, in accordance with Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action) that the owner or operator is no longer required to maintain financial assurance for reclamation or restoration.

(j) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the executive director for release of the amount in excess of the current cost estimate covered by the trust fund.

§37.9190. Trust Agreement Wording.

(a) A trust agreement for reclamation or restoration, as specified in §37.9185 of this title (relating to Trust Fund Requirements), must be worded as specified in the Trust Agreement in this subsection, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.9190(a)

(b) The Certification of Acknowledgment in this subsection is the certification of acknowledgment that must accompany the trust agreement for a trust fund as specified in §37.9185 of this title.
Figure: 30 TAC §37.9190(b)

§37.9195. Surety Bond Guaranteeing Payment Requirements.

(a) An owner or operator may satisfy the requirements of financial assurance by obtaining a surety bond that conforms to the requirements of this subchapter and by submitting an originally signed surety bond to the executive director.

(b) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of the Treasury.

(c) The wording of the surety bond must be identical to the wording specified in §37.9200 of this title (relating to Payment Bond Wording).

(d) The bond must guarantee that the owner or operator shall:

(1) fund the standby trust fund as required in §37.161 of this title (relating to Establishment of a Standby Trust) in an amount equal to the penal sum of the bond before the beginning of final reclamation at the quarry or restoration related to the quarry;

(2) fund the standby trust fund as required in §37.161 of this title in an amount equal to the penal sum within 15 days after a written directive by the executive director or commission to begin reclamation or restoration, or within 15 days after an order to begin final reclamation or restoration is issued by the United States district court or other court of competent jurisdiction; or

(3) provide alternate financial assurance as specified in this subchapter, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in §§37.41, 37.51, or 37.9170 of this title (relating to Use of Multiple Financial Assurance Mechanisms, Use of a Financial Assurance Mechanism for Multiple Facilities, and Financial Assurance Requirements for Reclamation and Restoration).

(g) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

§37.9200. Payment Bond Wording.

A surety bond guaranteeing payment for reclamation or restoration, as specified in §37.9195 of this title (relating to Surety Bond Guaranteeing Payment Requirements), must be worded as specified in the Payment Bond in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.9200

§37.9205. Irrevocable Standby Letter of Credit Requirements.

(a) An owner or operator may satisfy the requirements of financial assurance by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subchapter and submit an originally signed irrevocable standby letter of credit to the executive director.

(b) The financial institution issuing the irrevocable standby letter of credit shall be an entity that has the authority to issue irrevocable standby letters of credit and whose operations are regulated and examined by a federal or state agency.

(c) The wording of the irrevocable standby letter of credit must be identical to the wording specified in §37.9210 of this title (relating to Irrevocable Standby Letter of Credit Wording).

(d) The originally signed irrevocable standby letter of credit must be accompanied by a letter from the owner or operator referring to the irrevocable standby letter of credit by number, issuing institution, and date, and providing the following information for each quarry:

(1) the permit number;

(2) name and physical and mailing addresses of the quarry; and

(3) the amount of funds assured for reclamation or restoration by the irrevocable standby letter of credit.

(e) The letter of credit must be irrevocable and issued for a period of at least one year. The irrevocable standby letter of credit must provide that the expiration date shall be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail of a decision not to extend the expiration date. Under the terms of the irrevocable standby letter of credit, the 120 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.

(f) The irrevocable standby letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in §§37.41, 37.51, or 37.9170 of this title (relating to Use of Multiple Financial Assurance Mechanisms, Use of a Financial Assurance Mechanism for Multiple Facilities, and Financial Assurance Requirements for Reclamation and Restoration).

(g) Following a determination that the owner or operator has failed to perform reclamation or restoration in accordance with the reclamation or restoration plan, other applicable requirements of the permit(s), or written directive by the executive director or commission or that the owner or operator has failed to perform reclamation at the quarry or restoration related to the quarry in accordance with the permit, other applicable requirements, or written directive by the executive director or commission, the executive director may draw on the irrevocable standby letter of credit.

(h) If the owner or operator does not establish alternate financial assurance as specified in this subchapter and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the irrevocable standby letter of credit beyond the current expiration date, the executive director shall draw on the irrevocable standby letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the letter of credit.

During the last 30 days of any such extension, the executive director shall draw on the irrevocable standby letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this subchapter and obtain written approval of such assurance from the executive director.

(i) Upon termination, in accordance with §37.61 of this title (relating to Termination of Mechanisms), the executive director shall return the irrevocable standby letter of credit to the issuing institution.

§37.9210. Irrevocable Standby Letter of Credit Wording.

An irrevocable standby letter of credit for reclamation or restoration, as specified in §37.9205 of this title (relating to Irrevocable Standby Letter of Credit Requirements), must be worded as specified in the Irrevocable Standby Letter of Credit in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.9210

§37.9215. Insurance Requirements.

(a) An owner or operator may satisfy the requirements of financial assurance by obtaining insurance that conforms to the requirements of this subchapter and submitting an originally signed certificate to the executive director.

(b) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(c) The wording of the certificate of insurance must be identical to the wording specified in §37.9220 of this title (relating to Certificate of Insurance Wording).

(d) The insurance policy must be issued for a face amount at least equal to the current cost estimate for reclamation or restoration, except when a combination of mechanisms are used in accordance with §37.41 and §37.9170 of this title (relating to Use of Multiple Financial Assurance Mechanisms and Financial Assurance Requirements for Reclamation and Restoration). Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(e) The insurance policy must guarantee that funds shall be available to provide for reclamation at the quarry or restoration related to the quarry. The policy shall also guarantee that once reclamation at the quarry or restoration related to the quarry begins, the issuer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(f) An owner or operator or any other person authorized to perform reclamation or restoration may request reimbursement for expenditures for reclamation at the quarry or restoration related to the quarry by submitting itemized bills to the executive director. The request shall include an explanation of the expenses and all applicable itemized bills. The owner or operator may request reimbursement for partial reclamation at the quarry or restoration related to the quarry only if the remaining value of the policy is sufficient to cover the maximum remaining costs of reclamation at the quarry or restoration related to the quarry. Within 60 days after receiving bills for reclamation at the quarry or restoration related to the quarry, the executive director shall determine whether the reclamation or restoration expenditures are in accordance with the approved reclamation or restoration activities or are otherwise justified, and if so, shall instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the maximum cost of reclamation or restoration will be greater than the face amount of the policy, the executive director may withhold reimbursement of such amounts as deemed prudent until the executive director determines, in accordance with this subchapter, that the owner or operator is no longer required to maintain financial assurance requirements for reclamation at the quarry or restoration related to the quarry of the facility. If the executive director does not instruct the insurer to make such reimbursements, the executive director shall provide the owner or operator with a detailed written statement of reasons.

(g) The owner or operator shall maintain the policy in full force and effect until the executive director consents to termination of the policy. Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(h) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts.

(i) Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(1) the executive director deems the quarry abandoned;

(2) the permit expires, is terminated, is revoked, or a new or renewal permit is denied;

(3) reclamation or restoration is ordered by the executive director of the commission or by a United States district court or other court of competent jurisdiction;

(4) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(5) the premium due is paid.

(j) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

§37.9220. Certificate of Insurance Wording.

A certificate of insurance for reclamation or restoration, as specified in §37.9215 of this title (relating to Insurance Requirements), must be worded as specified in the Certificate of Insurance in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.9220

§37.9225. Financial Test Requirements.

(a) An owner or operator may satisfy the requirements of financial assurance by establishing a financial test that conforms to the requirements of this subchapter.

(b) To pass this test, the owner or operator must meet the criteria of either paragraph (1) or (2) of this subsection.

(1) The owner or operator shall have:

(A) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) net working capital and tangible net worth each at least six times the sum of the current cost estimates, liability coverage requirements, and any other financial assurance obligations under the Texas Commission on Environmental Quality (TCEQ) or other federal or state environmental regulations assured by a financial test;

(C) tangible net worth of at least $10 million; and

(D) assets located in the United States amounting to at least 90% of the owner's or operator's total assets or at least six times the sum of the current cost estimates, liability coverage requirements, and any other financial assurance obligations under the TCEQ or other federal or state environmental regulations assured by a financial test.

(2) The owner or operator shall have:

(A) a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(B) tangible net worth at least six times the sum of the current cost estimates, liability coverage requirements, and any other financial assurance obligations under the TCEQ or other federal or state environmental regulations assured by a financial test;

(C) tangible net worth of at least $10 million; and

(D) assets located in the United States amounting to at least 90% of the owner's or operator's total assets or at least six times the sum of the current cost estimates, liability coverage requirements, and any other financial assurance obligations under the TCEQ or other federal or state environmental regulations assured by a financial test.

(c) To demonstrate that the requirements of the test are being met, the owner or operator shall submit the following items to the executive director:

(1) a letter signed by the owner's or operator's chief financial officer worded identically to the wording specified in §37.9230 of this title (relating to Financial Test Wording);

(2) a copy of the owner's or operator's independently audited year-end financial statements for the latest fiscal year including the "unqualified opinion" of the auditor;

(3) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) the accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) in connection with that procedure:

(i) such amounts were found to be in agreement; or

(ii) no matters came to the attention of the accountant that caused the accountant to believe that the specified data should be adjusted;

(4) a written verification of the current bond rating from the applicable bond rating agency, if the owner or operator is using Alternative II of the letter signed by the owner's or operator's chief financial officer specified in §37.9230 of this title; and

(5) a schedule identifying intangible assets used to calculate tangible net worth.

(d) After the initial submission of items specified in subsection (c) of this section, the owner or operator shall send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (c) of this section.

(e) If the owner or operator no longer meets the requirements of subsection (b) of this section, a notice shall be sent to the executive director of intent to establish alternate financial assurance as specified in this subchapter. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data shows that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(f) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (b) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c) of this section. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (b) of this section, the owner or operator shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

(g) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed in the independent certified public accountant's report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion shall be cause for disallowance. The executive director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of the disallowance.

(h) Owners and operators choosing to meet the financial assurance requirement by using a financial test agree to fund the amount demonstrated for restoration within 60 days of written notification by the executive director to any party or parties specified by the executive director.

§37.9230. Financial Test Wording.

A letter from the chief financial officer for restoration or reclamation, as specified in §37.9225 of this title (relating to Financial Test Requirements), must be worded as specified in the Financial Test in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

Figure: 30 TAC §37.9230

§37.9235. Corporate Guarantee Requirements.

(a) An owner or operator may satisfy the requirements of financial assurance for reclamation or restoration by obtaining a written guarantee, hereafter referred to as "corporate guarantee," which conforms to the requirements of this subchapter.

(b) The guarantor shall be the direct or higher-tier parent corporation of the owner or operator or a corporation with a substantial business relationship with the owner or operator. The guarantor must meet the requirements for owners or operators as specified in §37.9225 of this title (relating to Financial Test Requirements). The guarantor must comply with the terms of the corporate guarantee.

(c) The wording of the corporate guarantee must be identical to the wording specified in §37.9240 of this title (relating to Corporate Guarantee Wording). The corporate guarantee shall accompany the items sent to the executive director as specified in §37.9225(c) of this title.

(d) If the guarantor has a substantial business relationship with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit a description of the substantial business relationship and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors or a certified letter from the chief financial officer, authorizing the corporate guarantee on behalf of the entity; an original or certified original copy of the Resolution by the Board of Directors authorizing the formation or acquisition of the guaranteed entity; an organizational chart that shows the relationship between the two entities; and the partnership agreement or other agreements, articles, or bylaws that set out the formation, structure, and operation of the guaranteed entity. After the initial submission of these items to demonstrate a substantial business relationship, if there has been no change in the substantial business relationship, the chief financial officer may submit a letter attesting that there has been no change.

(e) The terms of the corporate guarantee shall provide that:

(1) if the owner or operator fails to perform reclamation at the quarry or restoration related to the quarry covered by the corporate guarantee in accordance with the permits and other applicable requirements or written directive by the executive director or commission whenever required to perform such reclamation or restoration, the guarantor shall do so or establish a trust fund as specified in §37.9185 of this title (relating to Trust Fund Requirements) in the name of the owner or operator in the amount of the current cost estimate;

(2) the corporate guarantee will remain in force unless the guarantor sends notice of termination by certified mail to the owner or operator and the executive director and the owner or operator has obtained, and the executive director has approved, alternative financial assurance; and

(3) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of termination of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

§37.9240. Corporate Guarantee Wording.

A corporate guarantee for reclamation or restoration, as specified in §37.9235 of this title (relating to Corporate Guarantee Requirements), must be worded as specified in the Corporate Guarantee in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.
Figure: 30 TAC §37.9240

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§39.501, 39.503, and 39.651.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 1609, 79th Legislature, 2005, amended Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082, by making the applicant's public meeting and the TCEQ's public meeting on new hazardous waste management facilities and new municipal solid waste management facilities discretionary, rather than mandatory. In order to implement this change, the commission is proposing to amend §§39.501, 39.503, and 39.651 to reflect the change in statutory language from "shall hold a public meeting" to "may hold a public meeting."

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with Texas Register requirements, agency guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

The proposed amendments to §39.501(e), Application for Municipal Solid Waste Permit, distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005. The mandatory public meeting requirements in paragraph (1) for applications filed before September 1, 2005, are left in place, changing the subject from the "applicant" to the "application" to conform to the language in Section 6 of HB 1609. New paragraph (2) is proposed for discretionary public meetings for applications filed on or after September 1, 2005, and removing the 45-day requirement for the applicant's public meeting. New paragraph (2)(A)(i) also specifies that the agency's public meeting will be held under 30 TAC §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of Texas Water Code (TWC), §5.554 in new clause (ii). New paragraph (3) defines "substantial public interest" in terms of a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located. Existing paragraphs (2) - (4) are renumbered as paragraphs (4) - (6), and references back to paragraph (1)(A) in renumbered paragraphs (4) and (6) are made to refer back to paragraphs (1)(A) or (2)(A) while the reference back to paragraph (1)(B) in renumbered paragraph (5) is made to refer back to paragraphs (1)(B) or (2)(B).

The proposed amendments to §39.503(e)(1), Application for Industrial or Hazardous Waste Facility Permit, distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the "applicant" to the "application" to conform to the language in Section 6 of HB 1609. New paragraph (1)(A) retains the mandatory public meeting for applications filed before September 1, 2005, while new paragraph (1)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005. New paragraph (1)(B)(i) also specifies that the agency's public meeting will be held under 30 TAC §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii).

The proposed amendments to §39.503(e)(2) distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the applicant to the application to conform to the language in Section 6 of HB 1609 and including Class 3 modifications with major amendments. New paragraph (2)(A) retains the mandatory public meeting for applications filed before September 1, 2005, if a person affected files a request for a public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. New paragraph (2)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005, and removes the affected person requirement deleted from the statute in HB 1609. New paragraph (2)(B)(i) also specifies that the agency's public meeting will be held under §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii). New paragraph (3) defines "substantial public interest" in terms of a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located proposed to be located. Existing paragraphs (3) - (6) are renumbered as paragraphs (4) - (7).

The proposed amendments to renumbered §39.503(e)(4) distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the "applicant" to the "application" to conform to the language in Section 6 of HB 1609. New paragraph (3)(A) retains the mandatory applicant's public meeting for applications filed before September 1, 2005, and retains the 45-day deadline. New paragraph (3)(B) makes the applicant's public meeting discretionary for applications filed on or after September 1, 2005.

The proposed amendments to renumbered §39.503(e)(5) and (7) make references back to paragraph (1) refer back to paragraphs (1) or (2).

The proposed amendments to §39.651(e)(1), Application for Injection Well Permit, distinguish between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the "applicant" to the "application" to conform to the language in Section 6 of HB 1609. New paragraph (1)(A) retains the mandatory public meeting for applications filed before September 1, 2005, while new paragraph (1)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005. New paragraph (1)(B)(i) also specifies that the agency's public meeting will be held under §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii).

New §39.651(e)(2) separates the requirements for public meetings on applications for major amendments from old paragraph (1) and distinguishes between applications filed before September 1, 2005, the effective date of HB 1609, and applications filed on or after September 1, 2005, changing the subject from the applicant to the application to conform to the language in Section 6 of HB 1609 and including Class 3 modifications with major amendments. New paragraph (2)(A) retains the mandatory public meeting for applications filed before September 1, 2005, if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. New paragraph (2)(B) makes the public meeting discretionary for applications filed on or after September 1, 2005, and removes the affected person requirement deleted from the statute in HB 1609. New paragraph (2)(B)(i) also specifies that the agency's public meeting will be held under §55.154 that, in turn, requires the executive director or the Office of Public Assistance to hold a public meeting if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. At the direction of the commission, guidance on the executive director's discretion in determining substantial public interest in an application has been added by repeating a portion of TWC, §5.554 in new clause (ii). New paragraph (3) defines "substantial public interest" in terms of a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste

advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located proposed to be located.

New §39.651(e)(4) separates the statements that a public meeting is not a contested case proceeding and that a public meeting held as part of a local review committee process meets the requirements of this subsection if public notice is provided, similar to the separation of these statements in §39.501(e)(4) and §39.503(e)(5). Existing paragraphs (2) and (3) are renumbered as paragraphs (5) and (6).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed rulemaking.

The proposed rulemaking implements certain provisions of HB 1609 by making public meetings for new, amended, or Class 3 modifications of hazardous waste management facilities and new municipal solid waste management facilities discretionary, rather than mandatory. Texas Water Code, Chapter 5, and applicable agency regulations still provide an opportunity for the public or a member of the legislature to request a public meeting. Public meetings shall be held if the executive director determines that there is a substantial or significant degree of public interest in an application or if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held.

The proposed rulemaking is expected to decrease the number of public meetings held, depending upon the number of applicants and whether it is determined that there is significant public interest in the application. On average, there are between ten to 15 public meetings held each year for new municipal solid waste permits and hazardous waste permits (including Class 3 permits and major amendments). Units of local government that wish to obtain new or amended permits for municipal solid waste facilities may save the cost of public notice, and preparation time for public meetings for those applications where there is no substantial or significant public interest and no request for a public meeting by a member of the legislature. Public notice may cost as much as $1,000 depending upon the size of the circulation of the newspaper. Travel and staff time would depend upon the number of staff attending and the distance traveled.

The agency may save the cost of sending between four to seven staff members to public meetings at places anywhere in the state, for those applications where there is no substantial or significant public interest and no request for a public meeting by a member of the legislature. It is estimated that there will be five fewer mandatory public meetings each fiscal year. It is estimated that staff will attend approximately ten meetings per year due to significant interest or a legislative request. Most public meetings attended by agency staff generally only have per diem costs. However, some meetings take place in areas of the state where air travel, car rental, and overnight stay are required in addition to per diem costs. These trips may cost up to $3,000 depending upon the number of staff attending. Assuming each of the estimated five meetings required air travel and overnight stay for seven staff, the agency could save approximately $3,000 for each meeting, with total savings as much as $15,000 each year.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rulemaking will be compliance with state law and the more efficient use of public meetings.

There may be cost savings for businesses or individuals that seek new, major amendments, or Class 3 modifications of hazardous waste management facility permits or new municipal solid waste management facility permits.

The proposed rulemaking is expected to decrease the number of public meetings held, though any decrease will depend upon the number of applicants and whether it is determined that there is a substantial or significant public interest in the application or if there is a request by a member of the legislature. It is anticipated that there will be five fewer public meetings held each fiscal year. Affected businesses or individuals may save the cost of public notice and travel costs for sending personnel to public meetings for those applications where there is no substantial or significant public interest and no request for a public meeting by a member of the legislature. Public notice costs may be as much as $1,000, depending upon the size of the circulation of the newspaper. Other cost savings will vary depending upon personnel costs and other financial factors.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. It is not known how many small or micro-businesses will seek new, major amendments, or Class 3 modifications of hazardous waste management facility permits or new municipal solid waste management facility permits, but for those that do, there may be cost savings due to the fact that there may be a decrease in the number of public meetings held, though any decrease will depend upon the number of applicants and whether it is determined that there is significant public interest in the application.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rulemaking is to make public meetings on applications for new, major amendments, or Class 3 modifications for hazardous waste management facilities or new municipal solid waste management facilities discretionary. It is not anticipated that the proposed rulemaking will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this proposed rulemaking does not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rulemaking does not meet any of these requirements. First, the applicable federal standard calls for discretionary public meetings if there is a significant degree of public interest in a draft permit (40 Code of Federal Regulations §124.12(a)). Second, the proposed rulemaking does not exceed an express requirement of state law in Texas Health and Safety Code, §§361.0666(a), 361.0791(a) and (b), and 361.082(d), as amended by HB 1609. Third, there is no delegation agreement that would be exceeded by the proposed rulemaking. Fourth, the commission proposes this rulemaking under the specific authority of Texas Health and Safety Code, §§361.0666(a), 361.0791(a) and (b), and 361.082(d). This rulemaking is also proposed under the authority of Texas Health and Safety Code, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not propose this rulemaking solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to make public meetings for solid waste applications discretionary. The proposed rulemaking would substantially advance this stated purpose by making public meetings on solid waste applications subject to the same discretionary standards used for other waste programs.

Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property because the rulemaking does not affect real property. This rulemaking exercises commission jurisdiction over public meetings for municipal solid waste and hazardous waste applications.

There are no burdens imposed on private real property, and the benefits to society are more efficient use of agency staff resources in avoiding public meetings where no one from the public attends. In addition, the proposed rulemaking does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC, §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-068-039-LS. Comments must be received by 5:00 p.m., April 24, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact John E. Williams, Environmental Law Division, (512) 239-0455.

SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.501, §39.503

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082, as amended by HB 1609, which makes public meetings on solid waste applications discretionary; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

The proposed amendments implement HB 1609, which amended Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082.

§39.501. Application for Municipal Solid Waste Permit.

(a) Applicability. This section applies to applications for municipal solid waste [~~(MSW)~~] permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant for a municipal solid waste [~~an MSW~~] permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall [~~must~~] submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail

notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must [~~shall~~] also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing must [~~shall~~] be by certified mail.

(c) Notice of Receipt of Application and Intent to Obtain a Permit.

(1) (No change.)

(2) After the executive director determines that the application is administratively complete:

(A) notice must [~~shall~~] be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located. This notice must contain the text as required by §39.411(b)(1) - (9), (11), and (12) of this title (relating to Text of Public Notice);

(B) (No change.)

(C) the executive director or chief clerk shall mail the Notice of Receipt of Application and Intent to Obtain Permit, along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must [~~shall~~] be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). The notice must [~~shall~~] be published after the chief clerk has mailed the Notice of Application and Preliminary Decision to the applicant. The notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(e) Notice of public meeting.

(1) If an application for [~~applicant proposes~~] a new facility is filed before September 1, 2005:

(A) - (B) (No change.)

(2) If an application for a new facility is filed on or after September 1, 2005:

(A) the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility; and

(B) the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located.

(4) [~~(2)~~] A public meeting is not a contested case proceeding under the Administrative Procedure Act [~~APA~~]. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1)(A) or (2)(A) of this subsection if public notice is provided under this subsection.

(5) [~~(3)~~] The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must [~~shall~~] be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [~~3~~] inches (7.6 centimeters). For public meetings under paragraph (1)(B) or (2)(B) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must [~~shall~~] contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(6) [~~(4)~~] For public meetings held by the agency under paragraph (1)(A) or (2)(A) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(f) Notice of hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings [~~SOAH~~] for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) (No change.)

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must [~~shall~~] be mailed to the persons listed as owners in the

real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall [~~must~~] file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) (No change.)

(4) Notice under paragraphs (2) and (3)(B) of this subsection must [~~shall~~] be completed at least 30 days before the hearing.

§39.503. Application for Industrial or Hazardous Waste Facility Permit

(a) (No change.)

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall [~~must~~] submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth in [~~at~~] 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) [~~at 60 FedReg 63417,~~] and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) [~~at 60 FedReg 63417,~~] and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) [~~at 60 FedReg 63417~~]. The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.45 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) (No change.)

(d) (No change.)

(e) Notice of public meeting.

(1) If an application for [~~applicant proposes~~] a new hazardous waste facility is filed: [~~, the agency shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application.~~]

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning this application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for [~~applicant proposes~~] a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed: [~~, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests.~~]

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment concerning the application if a person affected files a request for a public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(II) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) [~~(3)~~] If an application for [~~applicant proposes~~] a new industrial or hazardous waste facility that would accept municipal solid waste is filed: [~~, the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.~~]

(A) before September 1, 2005, the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed; or,

(B) on or after September 1, 2005, the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(5) [~~(4)~~] A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) or (2) of this subsection if public notice is provided under this subsection.

(6) [~~(5)~~] The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(7) [~~(6)~~] For public meetings held by the agency under paragraph (1) or (2) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (concerning Contested Case Hearings).

(2) - (3) (No change.)

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the hearing.

(g) Injection wells. This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) [~~at 60 FedReg 63417,~~] apply to all applications for hazardous waste permits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601549
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-5017

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SUBCHAPTER L. PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

30 TAC §39.651

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082, as amended by HB 1609, which makes public meetings on solid waste applications discretionary; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

The proposed amendment implements HB 1609, which amended Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082.

§39.651. Application for Injection Well Permit.

(a) - (b) (No change.)

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) (No change.)

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (12) of this title (relating to Text of Public Notice). Notice under §39.418 [~~§38.418~~] of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must [~~shall~~] be in the form required by Texas Water Code, §5.115(c).

(4) For notice of receipt of application and intent to obtain a permit concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(A) - (D) (No change.)

(5) - (6) (No change.)

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) - (2) (No change.)

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" [~~shall~~] have the meaning as defined [~~provided for that term~~] in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision [~~notice of application and preliminary decision~~] concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(A) - (D) (No change.)

(5) - (6) (No change.)

(e) Notice of public meeting.

(1) If an application for [~~the applicant proposes~~] a new hazardous waste facility is filed: [~~, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment or requests for reconsideration or hearing. A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.~~]

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment on the application if a person affected files with the chief clerk a request for a public meeting concerning the application before the deadline to file public comment or to file requests for reconsideration or hearing; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application;

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(II) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (a) of this section

meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(5) [~~(2)~~] The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(6) [~~(3)~~] The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which [~~wherein~~] the proposed facility is located.

(B) - (C) (No change.)

(3) (No change.)

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601550
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-5017

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CHAPTER 311. WATERSHED PROTECTION SUBCHAPTER H. REGULATION OF QUARRIES IN THE JOHN GRAVES SCENIC RIVERWAY

30 TAC §§311.71 - 311.82

The Texas Commission on Environmental Quality (commission) proposes new §§311.71 - 311.82.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 1354, 79th Legislature, 2005, amended Texas Water Code (TWC), Chapter 26 by adding new Subchapter M, Water Quality Protection Areas; specifically §§26.551 - 26.562. The statute addresses permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation with regard to quarry operations. The requirements of the statute are applicable to a pilot program in the John Graves Scenic Riverway. The John Graves Scenic Riverway is defined as the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas.

Chapter 311, Subchapter H, implements §§26.551 - 26.554 and 26.562. New Subchapter H establishes the permitting and financial assurance requirements for the John Graves Scenic Riverway pilot program. A corresponding rulemaking is published in this issue of the *Texas Register* that includes the addition of Subchapter W, Financial Assurance for Quarries to Chapter 37, Financial Assurance.

SECTION BY SECTION DISCUSSION

Proposed new §311.71, Definitions, defines the terms used within the subchapter. Definitions for the following terms are consistent with definitions found in SB 1354: aggregates, John Graves Scenic Riverway, operator, overburden, owner, pit, quarry, quarrying, refuse, and water body. The following definitions were added to, or modified from, those contained in SB 1354: 25-year, 24-hour rainfall event, aquifer, best management practices, natural hazard lands, navigable, reclamation, restoration, responsible party, structural controls, tertiary containment, and water quality protection area. Definitions for 25-year, 24-hour rainfall event, aquifer, best management practices, natural hazard lands, and tertiary containment are generally consistent with other federal and/or state rules found in 40 Code of Federal Regulations and 30 TAC, respectively.

Proposed new §311.71(7) defines navigable, for the purposes of this subchapter, as "Designated by the United States Geological Survey (USGS) as perennial on the most recent topographic map(s) published by the USGS, at a scale of 1:24,000." Providing this definition eliminates any confusion regarding the term, given the significant variability in scope of other federal and state designations of navigability. This definition establishes the scope of proposed permitting requirements most closely related to perennial water bodies, where impacts to water quality, aquatic life, and navigability are of concern, and allows the commission to focus permitting and enforcement resources in those areas. Additionally, the use of USGS topographic maps as the source for determining navigability provides an easily accessible source and eliminates the interpretation necessary in a strictly narrative description.

Proposed new §311.71(14) and (17) include definitions for reclamation and restoration, respectively. The definitions are broad, but also define the scope of reclamation and restoration consistent with the scope of SB 1354.

Proposed new §311.71(16) defines responsible party as "Any owner, operator, lessor, or lessee who is primarily responsible for the overall function and operation of a quarry in the water quality protection area defined by §311.71(16)." This definition was modified from the definition found in SB 1354 so that it specifically references quarries located in a water quality protection area, as defined within the subchapter.

Proposed new §311.71(21) defines a water quality protection area as "For the purposes of this subchapter, the Brazos River and its contributing watershed occurring in Palo Pinto and Parker Counties below the Morris Shepard Dam." SB 1354 requires the commission to designate water quality protection areas through commission rules. The proposed definition of water quality protection area focuses permitting and enforcement resources within Palo Pinto and Parker Counties, where impacts from quarrying are of concern.

Proposed new §311.72, Applicability, identifies activities regulated by this subchapter and activities specifically excluded from regulation, consistent with SB 1354. Activities regulated by this subchapter include quarrying within a water quality protection area in the John Graves Scenic Riverway, as identified in subsection (a). Activities specifically excluded from regulation are identified in subsection (b)(1) - (4). Paragraphs (1), (4), and (5) exclude, respectively, the following: the construction or operation of a municipal solid waste facility regardless of whether the facility includes a pit or quarry that is associated with past quarrying; an activity, facility, or operation regulated under Natural Resources Code, Chapter 134, Texas Surface Coal Mining and Reclamation Act; and quarries mining clay and shale for use in manufacturing structural clay products. Paragraphs (2) and (3) exclude, respectively, the following: a quarry, or associated processing plant, that on or before January 1, 1994, has been in regular operation without cessation of operation for more than 30 consecutive days and under the same ownership; and the construction or modification of associated equipment located on a quarry site or associated processing plant site identified in §311.72(b)(2). Where facilities are specifically excluded by paragraphs (2) and (3), the exclusion is applicable to operations within the current lease hold or property boundaries. Where these facilities acquire additional lease holds and/or property, quarrying in those new areas will be subject to the requirements of this subchapter. As this distinction in applicability is dependant upon regular operation since January 1, 1994, without cessation for more than 30 days and operating within the current lease hold or property boundaries, facilities subject to this exclusion are required to maintain documentation on site to demonstrate the exclusion as provided in subsection (c). The responsible party carries the burden of proof in demonstrating that a quarry meets the exclusions listed in subsection (b).

In addition to the exclusion listed in new §311.72(b)(5), quarries mining clay and shale for use in manufacturing structural clay products are also excluded from regulation through the definition of aggregate and quarry in SB 1354 and this proposed subchapter. This exclusion includes current operations, the expansion of current operations on current property, the expansion of current operations to adjacent properties, or new operations.

Proposed new §311.73, Prohibitions, identifies areas within a water quality protection area in the John Graves Scenic Riverway where quarrying is prohibited, consistent with SB 1354. Proposed new §311.73(a) prohibits the construction or operation of any new quarry, or the expansion of an existing quarry, located within 200 feet of any water body. The construction or operation of any new quarry, or the expansion of an existing quarry, located between 200 feet and 1,500 feet of any water body is prohibited except where the requirements in §§311.75(2), 311.77, and 311.78(b) are met. For the purposes of this subchapter, a new quarry is any quarry that commenced operations after September 1, 2005. An existing quarry is any quarry that was in operation prior to September 1, 2005. Expansion of an existing quarry refers to any change to an existing quarry that results in additional disturbance, including the construction of additional processing areas.

Throughout this subchapter, prohibitions, application requirements, and performance criteria are established based upon the quarry's location relative to a navigable water body (as defined in §311.71). Where location is established as the distance from a water body, the distance is measured from the gradient boundary. Federal Emergency Management Agency flood hazard maps identify the 100-year floodplain relative to a water body.

In addition to any other required permits, proposed new §311.74, Authorization, requires all responsible parties to obtain permit coverage under 30 TAC Chapters 205 or 305. Section 311.74(1) identifies the requirements of this subchapter applicable to all quarries located within a water quality protection area in the John Graves Scenic Riverway. In addition to the requirements in paragraph (1), paragraph (2) requires individual permits for all quarries located within the 100-year floodplain, or within one mile, of a water body. The requirements of paragraph (3) are in addition to those found in paragraphs (1) and (2) for quarries located between 200 feet and 1,500 feet of a water body. These locational distinctions are consistent with SB 1354. Paragraphs (4) and (5) address facilities located within multiple applicability zones. The requirements for the more restrictive zone are applicable to the entire quarry, except where the executive director waives, modifies, or otherwise adjusts the requirements for that portion of the quarry located outside of the more restrictive applicability zone. The executive director anticipates waiving, modifying, or otherwise adjusting the requirements for that portion of the quarry located outside of the more restrictive applicability zone where a quarry can demonstrate that the portion of the facility located inside the more restrictive applicability zone will still meet all applicable performance requirements.

Proposed new §311.75, Permit Application Requirements, outlines the permit application requirements for all quarries located within a water quality protection area in the John Graves Scenic Riverway. Section 311.75(1) outlines the permit application requirements for all quarries located within a water quality protection area in the John Graves Scenic Riverway including requirements for the submission of financial assurance for restoration. Permit application requirements for quarries located between 200 feet and 1,500 feet of a water body within a water quality protection area in the John Graves Scenic Riverway are identified in paragraph (2). Paragraph (3) allows for the executive director to request any additional information necessary for the quarry to demonstrate compliance with TWC, Chapter 26, Subchapter M or this subchapter.

Proposed new §311.76, Restoration Plan, identifies the requirements for the Restoration Plan required in §311.75(1) for all quarries located within a water quality protection area in the John Graves Scenic Riverway. The Restoration Plan provides a proposed plan of action for how the responsible party will restore a water body to background conditions following an unauthorized discharge. Subsection (a)(1) and (2) outlines the requirements included in the Restoration Plan enabling the executive director to evaluate the applicant's methodology for determining the physical, chemical, and/or biological background conditions of each of the water bodies that may be at risk as a result of an unauthorized discharge from a quarry. Since background conditions in a water body may change over time, proposed paragraph (3) is designed to ensure that the determination of background conditions will be completed in a timely manner and reevaluated

and updated periodically. Paragraph (4) allows the applicant to consider the unique characteristics of the facility, the receiving waters at risk, and the background conditions of these water bodies and requires the applicant to identify the specific goals and objectives of potential restoration actions based on site-specific qualities of the adjacent water bodies and the facility. Paragraph (5) requires the applicant to include an evaluation of a reasonable range of potential restoration alternatives that may be implemented to achieve the goals and objectives identified in the Restoration Plan to return affected water bodies to background conditions. It further requires that the applicant identify a preferred restoration alternative that would be implemented in the event of an unauthorized discharge. To ensure the effectiveness and long-term success of the restoration action, paragraph (6) requires the applicant to describe the process that will be used to monitor the effectiveness of the preferred restoration action and identify the performance criteria that will be used to determine the success of the restoration or the need for interim on- and off-site stabilization. To ensure meaningful input from stakeholders on the restoration action that is ultimately implemented to restore the affected water body, paragraph (7) requires the applicant to identify a process for public involvement in the evaluation of the restoration action(s) selected to restore the receiving water body to background conditions. Paragraph (8) requires a detailed estimate of the maximum probable costs required to complete a restoration action used to support the amount of financial assurance required by §311.81(a). Certification of the Restoration Plan by a licensed Texas professional engineer is required in subsection (b).

Proposed new §311.77, Technical Demonstration, identifies the requirements for the Technical Demonstration required in §311.75(3) for all quarries located within 200 feet to 1,500 feet of a water body within a water quality protection area in the John Graves Scenic Riverway. Requirements for a time schedule for the proposed quarry from initiation to termination of operations, including restoration, are identified in subsection (a)(1). Subsection (a)(2), (3), and (4) provides a description of the geology, quarrying processes, and other operations that would be found on site. Identification of the type, character, and volume of all wastewater and storm water generated at the quarry is required in paragraph (5). Paragraph (6) requires the submission of a topographic map and lists all items that must be identified on the map. Paragraph (7) defines the minimum requirements for the Surface Water Drainage and Accumulation Plan, required by SB 1354. Paragraph (7)(A) requires a description of the use and monitoring of structural controls and best management practices as identified in the Best Available Technology Evaluation. The minimum items required for identification on a topographic map are listed in subparagraph (B)(i) - (v). Paragraph (8) lists the requirements for the Best Available Technology Evaluation. Paragraph (8)(A) requires that the applicant assess the use of structural controls and best management practices. Certification by a licensed Texas professional engineer is required for the design and construction of all structural controls. Subparagraph (B) requires an evaluation of performance criteria established in §311.79 and §311.80. This evaluation should help ensure that the requirements of §311.79 and §311.80 have been reviewed and will be met by the applicant. Paragraph (9) ensures that the applicant has developed procedures and schedules for the periodic review of the Technical Demonstration for consistency with quarry operations and site conditions. Subsection (b) requires certification of the Technical Demonstration by a licensed Texas professional engineer.

Proposed new §311.78, Reclamation Plan, identifies the requirements for the Reclamation Plan required in §311.75(3) for all quarries located within 200 feet to 1,500 feet of a water body within a water quality protection area in the John Graves Scenic Riverway. The minimum requirements of the Reclamation Plan are listed in subsection (a)(1)(A) - (C). Subparagraph (A) requires the applicant to provide a description of the proposed use of the disturbed area following reclamation. The proposed use of a reclaimed area will dictate the standards for reclamation, which subparagraph (B) requires the permittee to develop. Standards for reclamation must address removal or final stabilization of all materials, waste, structures, temporary roads/railroads, and equipment; backfilling, regrading, and recontouring; slope stabilization; and the establishment of vegetation, wildlife habitat, drainage patterns, and permanent control structures, as listed in paragraph (2)(i) - (xi). A description of how reclamation will be conducted and a timetable for the completion of reclamation activities is required in the Reclamation Plan in subparagraph (C). Paragraph (2) requires a detailed estimate of the maximum probable costs required to complete reclamation. Subsection (b) requires certification of the Reclamation Plan by a licensed Texas professional engineer.

Proposed new §311.79, Performance Criteria for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway, outlines the performance criteria applicable to all quarries located within a water quality protection area in the John Graves Scenic Riverway. Section 311.79(1) establishes a 45 milligrams per liter daily average effluent limitation for total suspended solids and a pH range of 6.0 to 9.0 standard units for all discharges to waters in the state. Effluent limitations for total suspended solids are established to reduce sediment loading to receiving water bodies. A daily average concentration of 45 milligrams per liter is achievable when proper best management practices and structural controls are installed and maintained. Effluent limitations for pH are established to preclude impacts to water quality and are achievable primarily through best management practices, although structural controls and/or treatment may be necessary. The applicability of total suspended solids and pH effluent limitations are limited in paragraph (2) to discharges resulting from a rainfall event less than the 25-year, 24-hour rainfall event. The 25-year, 24-hour rainfall event has historically been the design standard for water quality applications. Rainfall events beyond the 25-year, 24-hour rainfall event are typically considered an "act of God." To ensure that the effluent limitations established in paragraphs (1) and (2) are monitored consistently, monitoring frequencies are specified in paragraph (3) at once per day, when discharging. This monitoring schedule provides regular monitoring of discharges, allowing the commission and quarries to monitor the effectiveness of best management practices and structural controls. Paragraph (4) outlines monitoring and reporting requirements for monitoring conducted under paragraph (3). Because paragraph (2) limits the applicability of effluent limitations under severe rainfall conditions, paragraph (5) requires that the permittee install a permanent rain gauge and keep daily records of rainfall and resulting flow.

Proposed new §311.80, Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body Located Within a Water Quality Protection Area in the John Graves Scenic Riverway, outlines additional performance criteria applicable to all quarries located between 200 feet and 1,500 feet of a water body within a water quality protection area in the John Graves Scenic Riverway. Section 311.80(1)(A) - (F)

addresses design and construction requirements for final control structures including: certification of the design and construction, availability of design and construction plans and specifications, slope restrictions, water management capabilities, stabilization, inspection, and buffers. These requirements are established to ensure proper design and construction, operation, and maintenance of structural controls. Paragraph (2) provides for the proper operation of treatment, detention, and water storage tanks and ponds by requiring a minimum of two feet of freeboard. Paragraph (3) requires a depth marker so that compliance with paragraph (2) can be verified. Impacts to historical resources are addressed in paragraph (4) by requiring compliance with 36 Code of Federal Regulations Part 800 and 9 Texas Natural Resources Code, Chapter 191. Paragraph (5) addresses impacts to federal endangered/threatened, aquatic/aquatic-dependant species/proposed species or their critical habitat. As a measure of protection for water supply wells, paragraph (6) establishes siting restrictions for all waste management units. Paragraph (7) establishes requirements for secondary and tertiary containment of chemicals and fuels to reduce the potential for leaks and spills to contaminate surface and/or groundwater. Tertiary containment is required where quarry operations overlay aquifer and/or aquifer recharge areas and sufficient confining layers do not exist to preclude contamination. Secondary containment is required in all instances. Where natural hazards, frequent flooding, or areas of unstable geology exist, paragraph (8) prohibits the location of a quarry operation.

Proposed new §311.81, Financial Responsibility for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway, establishes requirements for financial assurance for restoration and reclamation as required by this subchapter.

Proposed new §311.81(a) requires that the owner or operator of a quarry located in the John Graves Scenic Riverway establish and maintain financial assurance, in an amount determined by the cost estimate within the approved Restoration Plan in §311.76(8), for restoration of a water body that is affected by an unauthorized discharge. The financial assurance is intended to cover the costs of site stabilization and restoration performed by an independent contractor and include design and engineering fees, costs of repairing failed or impaired structural controls, costs of soil stabilization and erosion control measures necessary to prevent additional releases, and where practicable, removal of excess silt, sediment, rocks, and debris from the affected water body.

Proposed new §311.81(b) requires that the owner or operator of a quarry located in the John Graves Scenic Riverway establish and maintain financial assurance, in an amount determined by the cost estimate within the Reclamation Plan in §311.78(2), for reclamation of the quarry. The financial assurance is intended to cover the costs of reclamation performed by an independent contractor. Costs of reclamation include design and engineering fees; removal or final stabilization of all materials, waste, structures, temporary roads/railroads, and equipment; backfilling, regrading, and recontouring; slope stabilization; and the establishment of vegetation, wildlife habitat, drainage patterns, and permanent control structures.

Proposed new §311.82, Expiration, specifies September 1, 2025, as the expiration date for Chapter 311, Subchapter H, consistent with SB 1354.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, determined that, for the first five-year period the proposed new rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government. However, fiscal implications, which may be significant, are anticipated for up to 16 quarry facilities currently operating in the John Graves Scenic Riverway.

The proposed rules implement SB 1354, which amended TWC, Chapter 26. The bill addresses permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation with regard to quarry operations in the John Graves Scenic Riverway. The John Graves Scenic Riverway is defined as the Brazos River Basin and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas.

The proposed rules would establish the permitting and financial assurance requirements for the John Graves Scenic Riverway 20-year pilot program. At this time, there are 16 permitted quarries operating within the John Graves Scenic Riverway. Quarries operating at a distance less than 200 feet would not be able to obtain a permit under the proposed rules. The remainder of these quarries would be required to obtain either an individual permit or coverage under a newly developed general permit based on their proximity to a water body within a water quality protection area in the John Graves Scenic Riverway. Those quarries operating between 200 feet and up to one mile of a water body would be required to obtain an individual permit. Quarries operating within a distance greater than one mile of a water body would obtain coverage under the newly developed general permit. The affected quarries are required to have a storm water pollution prevention plan under their current general permit. The proposed rules would increase permitting requirements, especially for those facilities located between 200 feet and 1,500 feet of a water body, though facilities located greater than 1,500 feet of a water body will also experience increased permitting requirements. Implementation of the new requirements is expected to increase operating costs for some quarry operators in the John Graves Scenic Riverway. None of the potentially affected quarries are owned or operated by units of local government.

The proposed rules would have no significant fiscal impact for the commission, although there may be an increase in the number of individual water quality permits issued by the agency. All quarries operating less than one mile from a perennial body of water would be required to obtain an individual permit and therefore have to pay a higher permit application fee. The maximum anticipated application fee for an individual permit is $1,250 and the fee for the general permit is $100. Fee revenue would increase dependent upon how many quarries would be required to switch to the individual permit. The additional fee revenue would be deposited in the Water Resource Management Account (Fund 153). Assuming all 16 facilities apply for individual permits, there would be an estimated one time revenue gain of $20,000.

A slight increase in the number of individual permits reviewed by the Water Quality Division is expected, along with higher levels of inspection activity. It is expected that the commission, in conjunction with the Texas Parks and Wildlife Department and the Brazos River Authority, would conduct inspections of the John Graves Scenic Riverway twice per year from the air and twice per year by boat. The costs may be shared among the inter-

ested agencies. The inspections are required twice per year until September 1, 2025, as specified by SB 1354. The additional workload is expected to be absorbed using current agency resources as no funds were appropriated to implement the requirements. SB 1354 also established the Reclamation and Restoration Fund Account within the General Revenue Fund. Penalties and other money received by the commission as a result of enforcement actions taken under the provisions of the proposed rulemaking would be deposited into the account. Money in the account could be appropriated only to the commission for the reclamation and restoration of the beds, bottoms, and banks of water bodies affected by unlawful discharges. Subsequent to the passage of SB 1354, the passage of SB 1605 by the 79th Legislature, 2005, invalidated the creation of the dedicated Reclamation and Restoration Account. If the recovery of penalty revenue or the procurement of cost recovery or financial assurance funds should occur, the commission will evaluate other mechanisms available to the agency for the deposit, accounting, and disbursement of these funds. It is projected that the rulemaking would result in no additional costs to units of local governments.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved water quality due to a decrease in the amount of suspended solids entering water bodies within a water quality protection area in the John Graves Scenic Riverway.

Fiscal implications are anticipated for businesses and individuals operating rock quarries in the John Graves Scenic Riverway. The proposed rules would establish the permitting and financial assurance requirements for the John Graves Scenic Riverway 20-year pilot program. At this time, there are approximately 16 permitted quarries operating within the John Graves Scenic Riverway that would be required to obtain either an individual permit or coverage under a general permit based on the proximity to a water body within a water quality protection area in the John Graves Scenic Riverway. The proposed requirements for quarries located greater than one mile from a water body include the development of a restoration plan, maintenance of financial assurance for restoration, and compliance with performance criteria. Quarries located within one mile of a water body will be required to obtain an individual permit, develop a restoration plan, maintain financial assurance for restoration, and comply with performance criteria. Quarries located between 200 feet and 1,500 feet of a water body are required to submit a Technical Demonstration, submit a Reclamation Plan, maintain financial assurance for reclamation, comply with additional performance criteria, obtain an individual permit, develop a Restoration Plan, maintain financial assurance for restoration, and comply with performance criteria.

Quarries required to obtain coverage under the individual permit would pay a permit application fee of $1,250 instead of $100 and may have to hire a professional engineer, professional geoscientist, or other qualified individual to design the Restoration Plan and where applicable, the Reclamation Plan, Technical Demonstration, and surface water drainage and water accumulation plan, as well as perform a review of best available technology to minimize adverse impacts. These professional costs may be in the range of $200 per hour, depending upon the size of the site. Professional fees are estimated to be between $3,200 and $32,200, assuming work would take anywhere from 2 to 20 days to complete.

Construction of the performance controls would be a new cost to quarry operators as well. To control runoff from the quarries, berming must be constructed down-gradient and most likely detention structures built to meet effluent limitations. Small sites could be bermed and detention basins built at an estimated cost of $1,400. Larger sites could take longer, especially with consideration of topography and vegetative cover. For those sites requiring a detention structure, it is projected that costs would be between $24,750 and $74,250 to excavate a one million-gallon detention basin. This would capture the rainfall from a 25-year, 24-hour rainfall event from 7.55 acres (an event of 7.2 inches).

Financial assurance is estimated to cost 3% to 5% per year of the amount estimated to restore and reclaim the site. It is estimated that on average, cost estimates providing the basis for the amount of financial assurance would cost a minimum of $100,000 for restoration and $200,000 for reclamation. Therefore, at a minimum, the financial assurance is estimated to cost between $3,000 and $15,000 per year in premiums, unless operations can qualify to meet the financial assurance provisions through a corporate financial test. Facilities located greater than 1,500 feet from a water body would be required to meet the financial assurance requirements for restoration activities. Those facilities located between 200 feet and 1,500 feet of a water body would be required to meet the proposed financial assurance requirements for both reclamation and restoration activities. Reclamation is required once the quarry terminates operations. Actual costs would vary by site and would be dependent upon the condition of the site at the time that operations cease. In addition, there may be other costs associated with the individual permit such as contested case hearing costs. If there is a contested case hearing, costs to the applicant could be anywhere from $5,000 to $100,000 for attorney fees and would depend upon the length of the hearing and other circumstances. Total costs for the new requirements are estimated to be between $43,000 and $223,000 to obtain an individual permit and between $6,300 and $37,300 for a general permit.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. A small business is defined as having fewer than 100 employees or less than $1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees. It is not known how many of the estimated 16 facilities are small or micro-businesses, but for those that are, there could be costs associated with the proposed permitting and financial assurance requirements.

Small or micro-businesses would be subject to the same requirements for compliance as larger businesses. Estimated costs would range from $43,000 to $223,000 to obtain an individual permit and between $6,300 and $37,300 for a general permit. Costs for a small business requiring coverage under an individual permit would range from $430 to $2,230 per employee and between $63 and $373 per employee for coverage under the general permit. For a micro-business, costs for coverage under the individual permit could range from $2,150 to $11,150 per employee and between $315 and $1,865 per employee for coverage under the general permit.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local econ-

omy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because, although the proposed rulemaking meets the definition of a "major environmental rule" as defined in §2001.0225, it does not meet any of the four applicability requirements listed in §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these four applicability requirements. First, regardless of whether the rules exceed a standard set by federal law, the proposed rules are specifically required to implement state law in SB 1354. Second, the proposed rules do not exceed a requirement of state law, in that they are being proposed to implement specific requirements of SB 1354. Third, the proposed rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose these rules solely under the general powers of the agency, but rather under the authority of SB 1354, which directs the commission to implement rules under TWC, Chapter 26.

The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and prepared an assessment of whether the proposed rules constitute a takings under Texas Government Code, Chapter 2007.

The specific purpose of the proposed rules is to implement SB 1354. The proposed rules protect a unique portion of the Brazos River watershed between Possum Kingdom Reservoir in Palo Pinto County and Parker County, Texas, to be known as the John Graves Scenic Riverway, from ongoing mining and quarrying activities in the proximity of the beds, bottoms, and banks of the river that significantly impair the quality of the water flowing in the river.

These proposed rules implement the requirements for quarries in the John Graves Scenic Riverway that were established in SB 1354. Under SB 1354, the commission may not authorize a quarry within 200 feet of a navigable water body within the John Graves Scenic Riverway. The bill prohibits the commission from authorizing the construction or operation of a new quarry or the expansion of an existing quarry between 200 and 1,500 feet of a navigable waterbody within the John Graves Scenic Riverway, unless certain performance criteria established by rulemaking are satisfied. SB 1354 further establishes that a quarry located or proposed to be located within one mile of a navigable waterbody in the John Graves Scenic Riverway must get an individual permit. Those quarries located or proposed to be located at a distance more than one mile must be covered under a general permit. This proposed rulemaking and related restrictions implement the express requirements of SB 1354.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property, because although the proposed rules do affect private real property, they do not constitute a "taking" as defined by the Private Real Property Rights Preservation Act. According to the Act, "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Texas Constitution, Article I, §17 or §19; or a governmental action that: 1) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and 2) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property is determined as if the governmental action is in effect.

The Fifth Amendment to the United States Constitution states in relevant part: "Nor shall private property be taken for public use, without just compensation." The takings clause applies to the states by virtue of the Fourteenth Amendment. Similarly, Texas Constitution, Article I, §17 provides: "No person's property shall be taken, damaged or destroyed without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money . . .."

Texas courts have held that takings can be classified as either physical or regulatory. Physical takings occur when the government authorizes an unwarranted physical occupation of an individual's property. The proposed rules do not authorize the physical occupation of any private real property; therefore, they will not result in a physical takings of private real property. A regulatory takings occurs when a regulation does not substantially advance legitimate state interests, or when a regulation either denies a landowner all economically viable use of property, or unreasonably interferes with a landowner's right to use and enjoy that property.

The proposed rules substantially advance a legitimate state interest by implementing SB 1354, relating to the protection of water quality in watersheds threatened by quarry activities; establishing a pilot program in certain portion of the Brazos River wastershed; and providing penalties. The commission is tasked with maintaining the quality of water in the state consistent with the public health and enjoyment, and the propagation and protection of terrestrial and aquatic life. SB 1354 is being implemented to protect the John Graves Scenic Riverway from ongoing mining and quarrying activities in the proximity of the beds, bottoms, and banks of the river that significantly impair the quality of the water flowing in the river.

Determining whether all economically viable use of a property would be denied entails an analysis of whether value remains in property subject to these rules if the proposed rules were adopted. The proposed rules do not prohibit quarrying altogether. While the proposed rules would prohibit quarrying within

200 feet of a navigable water body within the John Graves Scenic Riverway, quarrying would be permitted between 200 feet and 1,500 feet of a water body, provided that certain performance criteria are met. Facilities located more than one mile from a water body may obtain a general permit under TWC, §26.040. In addition, the proposed rules do not restrict other potential uses of property located in the John Graves Scenic Riverway. Therefore, the proposed rules would not deny any landowner all economically viable uses of a property.

Determining whether the proposed rules would unreasonably interfere with a landowner's right to use and enjoy property would require consideration of two factors: 1) the economic impact of the regulation; and 2) the extent to which the proposed rules interfere with distinct investment-backed expectations. This determination is typically made by courts on a fact-intensive, case-by-case basis.

As previously stated, the proposed rules do not prohibit quarrying altogether; instead, the rules restrict quarrying activities that will protect the quality of the water flowing in the John Graves Scenic Riverway. The commission does not anticipate that the proposed rules will unreasonably interfere with a landowner's investment-backed expectations, nor will the proposed rules be the producing cause of a 25% reduction in the market value of affected private real property.

The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Mineral Wells on April 6, 2006, at 6:30 p.m. at the Mineral Wells City Hall Annex, Council Chambers, 115 Southwest First Street. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Public Assistance at (512) 239-4000. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-051-037-PR. Comments must be received no later than 5:00 p.m., April 24, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Kimberly Wilson, Water Quality Division, (512) 239-4644.

STATUTORY AUTHORITY

The new rules are proposed under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 26 as amended by SB 1354, §2.

The proposed new rules implement SB 1354, which creates TWC, Chapter 26, new Subchapter M. SB 1354, §2, expressly requires the commission to adopt rules adequate to protect the water resources in a water quality protection area for inclusion in any authorization, including an individual or general permit.

§311.71. Definitions.

The following words and terms, when used in the subchapter, have the following meanings.

(1) 25-year, 24-hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours, as defined by the National Weather Service and Technical Paper Number 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments; or equivalent regional or state rainfall information.

(2) Aggregates--Any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, granite, gravel, gypsum, marble, sand, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance. The term does not include clay or shale mined for use in manufacturing structural clay products.

(3) Aquifer--A saturated permeable geologic unit that can transmit, store, and yield to a well, the quality and quantities of groundwater sufficient to provide for a beneficial use. An aquifer can be composed of unconsolidated sands and gravels; permeable sedimentary rocks, such as sandstones and limestones; and/or heavily fractured volcanic and crystalline rocks. Groundwater within an aquifer can be confined, unconfined, or perched.

(4) Best management practices--Any prohibition, management practice, maintenance procedure, or schedule of activity designed to prevent or reduce the pollution of water in the state. Best management practices include treatment, specified operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

(5) John Graves Scenic Riverway--That portion of the Brazos River Basin and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas.

(6) Natural hazard lands--Geographic areas in which natural conditions exist that pose or, as a result of quarry operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

(7) Navigable--Designated by the United States Geological Survey (USGS) as perennial on the most recent topographic map(s) published by the USGS, at a scale of 1:24,000.

(8) Operator--Any person engaged in or responsible for the physical operation and control of a quarry.

(9) Overburden--All materials displaced in an aggregates extraction operation that are not, or reasonably would not be expected to be, removed from the affected area.

(10) Owner--Any person having title, wholly or partly, to the land on which a quarry exists or has existed.

(11) Pit--An open excavation from which aggregates have been, or are being, extracted with a depth of five feet or more below the adjacent and natural ground level.

(12) Quarry--The site from which aggregates for commercial sale are being, or have been, removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, and the immediately adjacent land on which the plant processing the raw materials is located. The term does not include any land owned or leased by the responsible party not being currently used in the production of aggregates for commercial sale or an excavation to mine clay or shale for use in manufacturing structural clay products.

(13) Quarrying--The current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates for commercial sale from natural deposits occurring in the earth.

(14) Reclamation--The land treatment processes designed to minimize degradation of water quality, damage to fish or wildlife habitat, erosion, and other adverse effects from quarries. Reclamation includes backfilling, soil stabilization and compacting, grading, erosion control measures, appropriate revegetation, or other measures, as appropriate.

(15) Refuse--All waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

(16) Responsible party--Any owner, operator, lessor, or lessee who is primarily responsible for overall function and operation of a quarry located in the water quality protection area as defined in this section.

(17) Restoration--Those actions necessary to change the physical, chemical, and/or biological qualities of a receiving water body in order to return the water body to its background condition. Restoration includes on- and off-site stabilization to reduce or eliminate an unauthorized discharge, or substantial threat of an unauthorized discharge.

(18) Structural controls--Physical, constructed features that prevent or reduce the discharge of pollutants. Structural controls include, but are not limited to, sedimentation/detention ponds; velocity dissipation devices such as rock berms, vegetated berms, and buffers; and silt fencing.

(19) Tertiary containment--A containment method by which an additional wall or barrier is installed outside of the secondary storage vessel or other secondary barrier in a manner designed to prevent a release from migrating beyond the tertiary wall or barrier before the release can be detected.

(20) Water body--Any navigable watercourse, river, stream, or lake within the water quality protection area.

(21) Water quality protection area--The Brazos River and its contributing watershed within Palo Pinto and Parker Counties, Texas, downstream from the Morris Shepard Dam, and extending to the county line between Parker and Hood Counties, Texas.

§311.72. Applicability.

(a) This subchapter applies to quarrying within the water quality protection area designated by this subchapter, in the John Graves Scenic Riverway.

(b) This subchapter does not apply to:

(1) the construction or operation of a municipal solid waste facility regardless of whether the facility includes a pit or quarry that is associated with past quarrying;

(2) a quarry, or associated processing plant, that since on or before January 1, 1994, has been in regular operation without cessation of operation for more than 30 consecutive days and under the same ownership;

(3) the construction or modification of associated equipment located on a quarry site or associated processing plant site described in paragraph (2) of this subsection;

(4) an activity, facility, or operation regulated under Natural Resources Code, Texas Surface Coal Mining and Reclamation Act, Chapter 134; or

(5) quarries mining clay and shale for use in manufacturing structural clay products.

(c) Operations or facilities to which this subchapter does not apply under subsection (b)(2) and (3) of this section, must maintain adequate documentation on site sufficient to demonstrate their exclusions.

(1) Documentation demonstrating ownership includes, but is not limited to: deeds, property tax receipts, leases, or insurance records.

(2) Documentation demonstrating continuous operation without cessation of operation for more than 30 consecutive days beginning on or before January 1, 1994, includes, but is not limited to: production records, sales receipts, payroll records, sales tax records, income tax records, or financial statements/reports.

§311.73. Prohibitions.

(a) The construction or operation of any new quarry, or the expansion of any existing quarry, within 200 feet of any water body located within a water quality protection area in the John Graves Scenic Riverway is prohibited.

(b) Unless authorized under this subchapter, the construction or operation of any new quarry, or the expansion of an existing quarry, located between 200 feet and 1,500 feet of any water body located within a water quality protection area in the John Graves Scenic Riverway is prohibited.

§311.74. Authorization.

(a) Any responsible party shall obtain a permit subject to the requirements of Chapters 205 and 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits).

(b) The following additional requirements imposed through this subchapter for discharges from quarries located within a water quality protection area in the John Graves Scenic Riverway are based on the location of the quarry.

(1) In addition to the requirements of Chapters 205 and 305 of this title, a quarry located within a water quality protection area in the John Graves Scenic Riverway must meet the following requirements:

(A) §311.75(1) of this title (relating to Permit Application Requirements);

(B) §311.79 of this title (relating to Performance Criteria for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway); and

(C) §311.81(a) of this title (relating to Financial Responsibility for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway).

(2) In addition to the requirements of Chapters 205 and 305 of this title and paragraph (1) of this section, any quarry located within the 100-year floodplain or within one mile of a water body within a water quality protection area in the John Graves Scenic Riverway must obtain an individual permit.

(3) In addition to the requirements of Chapters 205 and 305 of this title and paragraph (1) and (2) of this section, all quarries located within 200 feet to 1,500 feet of a water body within a water quality protection area in the John Graves Scenic Riverway, and subject to the prohibition under §311.73(b) of this title (relating to Prohibitions), must meet the following requirements:

(A) §311.75(2) of this title;

(B) §311.80 of this title (relating to Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body Located Within a Water Quality Protection Area in the John Graves Scenic Riverway); and

(C) §311.81(b) of this title.

(4) For any quarry subject to the provisions of paragraph (2) of this section, a part of which is also located outside of the 100-year floodplain of, or beyond one mile from, a water body, the requirements of paragraph (2) of this section are applicable to the entire quarry. The executive director may waive, modify, or otherwise adjust these requirements for that portion of the quarry located outside of the 100-year floodplain of, or beyond one mile from, a water body.

(5) For any quarry subject to the provisions of paragraph (3) of this section, a part of which is also located more than 1,500 feet from a water body, the requirements of paragraph (3) of this section will be applicable to the entire quarry. The executive director may waive, modify, or otherwise adjust these requirements for that portion of the quarry located more than 1,500 feet from a water body.

§311.75. Permit Application Requirements.

Any responsible party who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions in Chapters 205 and 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits). Quarries located in the John Graves Scenic Riverway must submit additional information based on the location of the quarry.

(1) A quarry located within a water quality protection area in the John Graves Scenic Riverway must submit the following:

(A) a Restoration Plan as outlined in §311.76 of this title (relating to Restoration Plan); and

(B) evidence of sufficiently funded bonding or proof of financial resources to mitigate, remediate, and correct any potential future effects on a water body by an unauthorized discharge to a water body in an amount no less than that specified in §311.81(a) of this title (relating to Financial Responsibility for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway).

(2) In addition to the permit application requirements specified in paragraph (1) of this section, all applications for quarries located within 200 feet to 1,500 feet of any water body within a water quality protection area in the John Graves Scenic Riverway must include:

(A) a Technical Demonstration as outlined in §311.77 of this title (relating to Technical Demonstration); and

(B) a Reclamation Plan as outlined in §311.78 of this title (relating to Reclamation Plan).

(3) In addition to the permit application requirements in paragraphs (1) and (2) of this section, the executive director may require any additional information deemed appropriate and necessary to demonstrate compliance with the provisions of Texas Water Code, Chapter 26, Subchapter M or this subchapter.

§311.76. Restoration Plan.

(a) The Restoration Plan must include a proposed plan of action for how the responsible party will restore the receiving waters to background conditions in the event of an unauthorized discharge that affects those receiving waters. The Restoration Plan, at a minimum, must:

(1) identify receiving waters at risk of an unauthorized discharge from the quarry;

(2) describe the process to be used in documenting the existing physical, chemical, and/or biological background conditions of each of the adjacent receiving waters;

(3) provide a schedule for completing the determination of background conditions of each of the receiving waters and for updating background conditions in the future, as appropriate;

(4) identify the goals and objectives of potential restoration actions;

(5) provide a reasonable range of restoration alternatives and the preferred restoration alternative that may be implemented to return the affected waters to background conditions in the event of an unauthorized discharge;

(6) describe the process for monitoring the effectiveness of the preferred restoration action, including performance criteria, that will be used to determine the success of the restoration or need for interim site stabilization;

(7) identify a process for public involvement in the selection of the restoration alternative to be implemented to restore the receiving waters to background conditions; and

(8) provide a detailed estimate of the maximum probable costs required to complete a restoration action, given the size, location, and description of the quarry and the nature of the receiving waters. The maximum probable cost must be based on the costs to a third party conducting the action without a financial interest or ownership in the quarry.

(b) Certification of the Restoration Plan must be provided by a licensed Texas professional engineer.

§311.77. Technical Demonstration.

(a) The Technical Demonstration must include, at a minimum:

(1) a time schedule for the proposed quarry from initiation to termination of operations, including reclamation;

(2) a detailed description of the type of quarrying to be conducted, including the processes/methods employed (e.g., pit mining where blasting is employed);

(3) a geological description of the quarry area, including a detailed description of the material deposit: type, geographical extent, depth, and volume; and a description of the general area geology;

(4) identification and a detailed description of any other operations on site, including raw-material processing and/or secondary products (e.g., cement) processing;

(5) identification and a detailed description of type, character, and volume of wastewater and storm water generated on site;

(6) a topographic map, at a scale appropriate to represent the quarry operation and all of the following within the boundaries of the quarry:

(A) waterbodies;

(B) existing and proposed roads including quarry access roads;

(C) existing and proposed railroads;

(D) the 100-year floodplain boundaries, if applicable;

(E) structures (e.g., office buildings);

(F) the location of all known wells including, but not limited to, water wells, oil wells, and uplugged and abandoned wells;

(G) active, post, and reclaimed quarrying areas;

(H) buffer areas;

(I) raw material, intermediate material, final product, waste product, byproduct, and/or ancillary material storage and processing areas;

(J) chemical and fuel storage areas;

(K) vehicle/equipment maintenance, cleaning, and fueling areas;

(L) vehicle/equipment loading and unloading areas;

(M) baghouses and other air treatment units exposed to precipitation; and

(N) waste disposal areas;

(7) a Surface Water Drainage and Water Accumulation Plan. The Surface Water Drainage and Water Accumulation Plan must be designed to prevent damage to fish, wildlife, and fish/wildlife habitat from erosion, siltation, and runoff from quarry operations. The Surface Water Drainage and Water Accumulation Plan must, at a minimum:

(A) describe the use and monitoring of structural controls and best management practices as identified in paragraph (8) of this subsection designed to control erosion, siltation, and runoff; and

(B) provide a topographic map, at a scale appropriate to represent the quarry operation and all of the following within the boundaries of the quarry:

(i) the location of each process wastewater and/or storm water outfall;

(ii) an outline of the drainage area that contributes storm water to each outfall;

(iii) treatment, detention, and water storage tanks and ponds;

(iv) structural controls for managing storm water and/or process wastewater; and

(v) physical features of the site that would influence storm water runoff or contribute a dry weather flow; and

(8) a Best Available Technology Evaluation. The Best Available Technology Evaluation assists staff in reviewing and determining the best available technology designed to control erosion, siltation, and runoff from the quarry to minimize disturbance and adverse effects to fish, wildlife, and related environmental resources. Where practical, the Best Available Technology Evaluation must assist staff in reviewing and determining best available technology designed to enhance fish, wildlife, and related environmental resources.

(A) The Best Available Technology Evaluation must assess the use of structural controls and best management practices.

(B) The Best Available Technology Evaluation must evaluate performance criteria outlined in §311.79 and §311.80 of this title (relating to Performance Criteria for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway and Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body Located Within a Water Quality Protection Area in the John Graves Scenic Riverway).

(C) Structural control design and construction must be certified by a licensed Texas professional engineer. Design and construction plans/specifications must be maintained on site and made available at the request of the executive director; and

(9) a procedure and schedule for reviewing the Technical Demonstration for consistency with quarry operations and site conditions and effectiveness in controlling erosion, siltation, and runoff.

(b) Certification of the Technical Demonstration must be provided by a licensed Texas professional engineer.

§311.78. Reclamation Plan.

(a) The Reclamation Plan establishes procedures and standards for reclamation of the quarry.

(1) The Reclamation Plan must, at a minimum:

(A) provide a description of the proposed use of the disturbed area following reclamation;

(B) develop site-specific standards for reclamation appropriate to the end use proposed in subparagraph (A) of this paragraph that addresses the following:

(i) removal or final stabilization of all raw material, intermediate material, final product, waste product, byproduct, and/or ancillary material;

(ii) removal of waste or closure of all waste disposal areas;

(iii) removal of structures, where appropriate;

(iv) removal and reclamation of all temporary roads and/or railroads;

(v) backfilling, regrading, and recontouring;

(vi) slope stability for remaining highwalls and detention ponds;

(vii) revegetation of the reclaimed area giving consideration to species diversity and the use of native species;

(viii) establishment of wildlife habitat, giving consideration to creation/expansion of habitat for endangered and threatened species, where applicable;

(ix) establishment of drainage patterns;

(x) establishment of permanent control structures (e.g., retention ponds), where necessary, to address erosion, siltation, and runoff from post quarrying and reclaimed areas; and

(xi) removal of all equipment;

(C) provide a description of how reclamation will be conducted (e.g., phased reclamation) and a timetable for the completion of reclamation activities.

(2) The Reclamation Plan must include a detailed estimate of the maximum probable cost required to complete and implement the plan. The maximum probable cost must be based on the cost to a third party conducting the reclamation without a financial interest or ownership in the quarry operation.

(b) Certification of the Reclamation Plan must be provided by a licensed Texas professional engineer.

§311.79. Performance Criteria for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway.

The following performance criteria are applicable to quarries located within a water quality protection area in the John Graves Scenic Riverway.

(1) Discharges from quarries shall meet the following effluent limitations.
Figure: 30 TAC §311.79(1)

(2) Discharges from quarries resulting from a rainfall event greater than the 25-year, 24-hour rainfall event are not subject to effluent limitations in paragraph (1) of this section.

(3) Discharges from quarries shall be monitored as follows.
Figure: 30 TAC §311.79(3)

(4) Results of analysis for monitoring conducted as specified in §311.75(3) of this title (relating to Permit Application Requirements) shall be submitted monthly on approved self-report forms. Monitoring and reporting records, including strip charts and records of calibration and maintenance, shall be retained on site, or shall be readily available for review by a commission representative for a period of three years from the date of the record or sample, measurement, or report.

(5) The permittee shall install a permanent rain gauge at the plant site and keep daily records of rainfall and the resulting flow. Monitoring records shall be retained on site, or shall be readily available for review by a commission representative for a period of three years from the date of the record.

§311.80. Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body Located Within a Water Quality Protection Area in the John Graves Scenic Riverway.

Authorizations to discharge from quarries located between 200 feet and 1,500 feet of a water body within a water quality protection area in the John Graves Scenic Riverway require the permittee to satisfy the following performance criteria. An evaluation of these performance criteria must be incorporated into the Technical Demonstration, as required in §311.77 of this title (relating to Technical Demonstration).

(1) The down-gradient perimeter of the quarry must include a final control structure to manage the discharge of wastewater and/or storm water. The final control structure must be designed and constructed as follows.

(A) Certification of the final control structure design and construction must be provided by a licensed Texas professional engineer. Design and construction plans and specifications must be maintained on site and made available at the request of the executive director.

(B) The final control structure side slopes must not exceed a gradient of 1:3 (33%).

(C) The final control structure must be designed to impound, at minimum, the volume of water resulting from a 25-year, 24-hour rainfall event for the final control structure drainage area.

(D) The final control structures must be properly stabilized (via use of vegetation, riprap, and/or other acceptable technique) to prevent the final control structure from being a source of pollution and/or to prevent structural failure.

(E) The final control structure must be inspected once every 14 calendar days and within 24 hours of any rainfall event totaling 0.5 inches or greater. Where an inspection identifies failure and/or problems with the final control structure, corrections must be made within seven calendar days of the inspection. Records of these inspections and any site stabilizations must be maintained on site for a period of three years and made available to the executive director, upon request.

(F) A minimum 200-foot vegetative buffer must be maintained between the final control structure and any water body.

(2) All treatment, detention, and water storage tanks and ponds must be operated to maintain a minimum freeboard of two feet.

(3) A permanent depth marker shall be installed and maintained on all treatment, detention, and water storage tanks and ponds. The depth marker shall identify the volume required for the design rainfall event, as specified in paragraph (1)(C) of this section, and freeboard.

(4) The quarry operation must demonstrate compliance with all the requirements of 36 Code of Federal Regulations Part 800 (Protection of Historic Properties) and 9 Texas Natural Resources Code, Chapter 191 (Antiquities Code).

(5) The quarry operation must not have a detrimental effect on any federal endangered/threatened, aquatic/aquatic-dependent species/proposed species; or their critical habitat.

(6) Waste management units must be located a minimum horizontal distance from water wells, in accordance with 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), or where those regulations do not apply, the minimum distance to a water well must be 500 feet.

(7) Secondary containment of chemical and fuel storage is required. Where quarry operations overlay aquifer and/or aquifer recharge areas and sufficient confining layers do not exist to preclude contamination of groundwater, tertiary containment is required for all chemical and fuel storage.

(8) Quarry operations must not be located on natural hazard land, areas subject to frequent flooding, or in areas of unstable geology.

§311.81. Financial Responsibility for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway.

(a) An owner or operator of a quarry located within a water quality protection area in the John Graves Scenic Riverway shall establish and maintain financial assurance for restoration in accordance with Chapter 37, Subchapter W of this title (relating to Financial Assurance for Quarries). The amount of financial assurance must be no less than the amount determined by the executive director as sufficient

to meet the requirements of the Restoration Plan in §311.76(8) of this title (relating to Restoration Plan).

(b) An owner or operator of a quarry located between 200 feet and 1,500 feet of a water body within a water quality protection area in the John Graves Scenic Riverway shall establish and maintain financial assurance for reclamation in accordance with Chapter 37, Subchapter W of this title. The amount of financial assurance must be no less than the amount determined by the executive director as sufficient to meet the requirements of the Reclamation Plan in §311.78(2) of this title (relating to Reclamation Plan).

§311.82. Expiration.

This subchapter expires September 1, 2025.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601537
Stephanie Bergeron Perdue
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-5017

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to amend §§335.1, 335.10 - 335.12, 335.15, 335.41, 335.67 - 335.69, 335.76, 335.112, and 335.152.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to implement the United States Environmental Protection Agency's (EPA) new Uniform Hazardous Waste Manifest form, continuation sheet, and instructions for completing the form as published in the March 4, 2005, issue of the *Federal Register*(70 FR 10776) and amended in the June 16, 2005, issue of the *Federal Register* (70 FR 35034). The proposed rules would also add three definitions, change when a container is empty, and modify placarding requirements. Manifesting requirements for Texas Class 1 wastes are proposed to conform to the new hazardous waste manifest requirements. The key component of this manifest system is the Uniform Hazardous Waste Manifest, which is a form prepared by all generators who transport, or offer for transport, hazardous waste for off-site treatment, recycling, storage, or disposal. Currently, the manifest is a paper document containing multiple copies of a single form. When completed, it contains information on the type and quantity of the waste being transported, instructions for handling the waste, and signature lines for all parties involved in the disposal process. The manifest is required by the Department of Transportation (DOT), the EPA, and the State of Texas. Manifests are required for both hazardous waste and Texas Class 1 waste. Each party that handles the waste signs the manifest and retains a copy for themselves. This ensures critical accountability in the transportation and disposal processes. Once the waste reaches its destination, the receiving facility returns a signed copy of the manifest to the generator, confirming that the waste has been received by the designated facility.

The EPA has established new requirements revising the Uniform Hazardous Waste Manifest and the requirements for completing the form, as well as adding three definitions, changing when a container is empty, and modifying placarding requirements. Manifesting requirements for Texas Class 1 wastes are proposed to continue to conform to the new hazardous waste manifest requirements. The revisions will standardize the content and appearance of the Uniform Hazardous Waste Manifest, EPA Form 8700-22, and continuation sheet, EPA Form 8700-22A; make the forms available from a greater number of sources; and adopt new procedures for tracking certain types of waste shipments with the manifest. These types of shipments include hazardous wastes that destination facilities reject, wastes consisting of residues from non-empty hazardous waste containers, and wastes entering or leaving the United States.

The State of Texas requires a manifest for Texas Class 1 wastes under specific circumstances. Texas Class 1 wastes are not regulated by the EPA as hazardous wastes. This proposal does not affect when a manifest is required for Class 1 wastes; however, it does propose to change the manifest requirements for Texas Class 1 waste to conform with federal requirements. This is being proposed to avoid any possible confusion between two different manifest systems.

The EPA has established an 18-month transition to the new form. During this 18-month period, handlers will only use the old form. The old forms may still be obtained from existing sources. The 18-month period ends on September 5, 2006. On that date, for hazardous waste shipments, federal manifest requirements will trump state manifest requirements where the state requirements do not conform with the federal requirements and only the new Uniform Hazardous Waste Manifest may be used. Therefore, the commission is proposing these rules so that the Texas manifest requirements mirror federal requirements. The commission is proposing that the rules be effective on September 5, 2006. This includes the proposed revisions to the Texas Class 1 manifest requirements.

Handlers can obtain new forms from any source that has registered with EPA to print and distribute the form. The EPA will not distribute forms; rather, the EPA will oversee the printing requirements and ensure that registered printers follow them. The EPA will maintain a list of entities that have been approved to print/distribute the form, so that the public may acquire the forms from one of the approved printers. States may register to print the new form, but state rules cannot establish the state as the exclusive source of forms. The TCEQ is not planning to register to print forms, but will provide free manifests to those individuals that need 50 or less in a given year. This will be accomplished by the TCEQ purchasing a minimum supply of the Uniform Hazardous Waste Manifest from a registered printer.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, November 2004.

The commission proposes to amend Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, to incorporate the new EPA Uniform Hazardous Waste Manifest, EPA Form 8700-22, the continuation sheet, EPA Form 8700-22A, and

instructions for completing the form as published in the March 4, 2005, issue of the *Federal Register* (70 FR 10776) and amended in the June 16, 2005, issue of the *Federal Register* (70 FR 35034). The proposed rules would also add three definitions, change when a container is empty, modify placarding requirements, and change manifesting requirements for Texas Class 1 wastes to conform to the federal requirements.

Subchapter A - Industrial Solid Waste and Municipal Hazardous Waste In General

§335.1. Definitions.

Section 335.1 is proposed to be amended by adding paragraph (13) "Captive facility," a facility that accepts wastes from only related (within the same corporation) off-site generators; paragraph (14) "Captured facility," a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex; and paragraph (15) "Captured receiver," a receiver which is located within the property boundaries of the generators from which it receives waste. "Captured facility" is being removed from paragraph (20) and placed into its own paragraph. "Captive facility" and "Captured receiver" are proposed to be added to define the terms used by the TCEQ for the regulated community. These new definitions are consistent with the commission's interpretation of these words in the past. 40 Code of Federal Regulations (CFR) §260.10 removes the definition of "Manifest document number," revises the definitions of "Designated facility" and "Manifest," and adds the definition of "Manifest tracking number." The commission proposes mirroring these removals and additions in this section and renumbering the definitions appropriately. These additions and amendments are necessary to accurately reflect EPA's definitions, terms, and use for regulating hazardous waste.

§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

Section 335.10 sets forth the procedures related to generators of hazardous or Class 1 waste and primary exporters of hazardous waste consigned to a foreign country and is proposed to be amended by incorporating the EPA changes regarding the manifest document format, instructions, and the special provisions for Class 1 waste. Under the statutory authorities of both the Resource Conservation and Recovery Act (RCRA) and DOT, all states will implement the new (nationally uniform) RCRA Hazardous Waste Manifest (EPA Form 8700-22) and if necessary the continuation sheet (EPA Form 8700-22A). Generators must ensure that all hazardous and Class 1 wastes offered for transportation are accompanied by a manifest as required in this section. All manifests for hazardous waste must be completed according to the instructions found in the Appendix of 40 CFR Part 262. Itemized instructions for completing the manifest are proposed to be removed from the rules and replaced by references to the Appendix of 40 CFR Part 262. The Uniform Hazardous Waste Manifest may be obtained from any source that has received approval from and registered with the EPA as a supplier of the manifest as mandated in 40 CFR §262.21(g)(1). Treatment, storage, and disposal facilities that offer for transport a rejected hazardous waste load are included in the rules requiring manifests by 40 CFR §262.20(a)(1) and (2). The commission proposes to amend this section to conform with these requirements. Texas tracks hazardous and Class 1 wastes by the Texas Waste Code and therefore, it is proposed that all manifests contain the Texas Waste Code for each waste listed. The proposed rules would require that all manifests for Class 1 waste be completed according to the instructions found in the Appendix of 40 CFR Part 262 with the following modifications: in accordance with the instructions, it is proposed that the Texas Waste Codes be used in lieu of the EPA waste code and the TCEQ generator, transporter, and treatment, storage, and disposal facility identification numbers be used when EPA identification numbers are not required. The proposed changes would require a generator to ensure interstate and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered to facilities that are authorized to operate under an approved state program or the federal program.

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste.

Section 335.11 sets forth the procedures related to transporters of hazardous or Class 1 waste for which a manifest is required and is proposed to be amended to be consistent with 40 CFR Part 263. Specific instructions are proposed to be replaced with references to the Appendix of 40 CFR Part 262. In the case of hazardous waste exports, it is proposed that the transporter must ensure that the shipment conforms to the requirements set forth in the regulations contained in 40 CFR §263.20(a). The proposal would require that transporters who transport hazardous waste or Class 1 waste out of the United States will comply with manifest requirements as set forth in §335.10. If the transporter cannot deliver the waste because of an emergency condition other than rejection of the waste by the designated facility, the new rules would require the transporter to contact the generator for further directions and revise the manifest according to the generator's instructions. If hazardous waste is partially rejected by the designated facility while the transporter is on the facility's premises, it is proposed that the transporter obtain a copy of the original manifest that includes the facility's date and signature, the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue on the manifest. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, or if the original manifest is not used, the proposed rules call for the transporter to obtain a new manifest to accompany the shipment.

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

Section 335.12 sets forth the procedures related to treatment, storage, and disposal facilities and is proposed to be amended by changing the section title to be consistent with the term "treatment" as used by the TCEQ and by 40 CFR Part 264. The amendment is proposed to conform with EPA manifest requirements. The EPA new rules change the manifest to incorporate specific areas and instructions for rejected wastes. Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers, the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. The facility must send the waste to the alternate facility or back to the generator within 60 days of the rejection or the container residue identification. While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the

waste, pending delivery of the waste to the first transporter designated on the manifest. A new manifest is required for full or partial load rejections and residues that are to be sent off-site to an alternate facility or back to the generator. For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility, and the new manifest must include all required information. When a rejected full load is taken to an alternate facility or returned to the generator, a copy of the original manifest will be annotated with the rejecting facility's signature, date, description of the rejection, the name, address, phone number, and EPA identification number for the alternate facility or generator to whom the shipment must be delivered. If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify the information as amended. These amendments are proposed to conform to EPA rules and establish manifest discrepancies as a significant difference between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives; rejected wastes, which may be a full or partial shipment that the treatment, storage, and disposal facility cannot accept; or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR §261.7(b). Significant differences in quantity for bulk weight are variations greater than 10% in weight and for batch waste are any variation in piece count. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis. Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to the manifest being amended. It is further proposed that a facility that receives hazardous or Class 1 waste from a rail or water transporter be required to retain at the facility a copy of each shipping paper and manifest. It is proposed that if a facility receives waste imported from a foreign source, the receiving facility mails a copy of the manifest to the International Compliance Assurance Division, OFA/OECA, EPA. This section is proposed to be consistent with the EPA changes listed in this paragraph.

§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

Section 335.15 sets forth procedures for owners and operators who receive hazardous or Class 1 waste from off-site sources or who have notified that they intend to receive hazardous or Class 1 waste from off-site sources. This section is proposed to be amended by changing the section title to be consistent with the term "treatment" as used by the agency and by outlining that if a facility accepts for treatment, storage, or disposal any hazardous waste or Class 1 waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper, and if the waste is not excluded from the manifest requirement, that the owner or operator must prepare and submit a letter to the executive director within 15 days after receiving the waste and include all required information.

Subchapter B - Hazardous Waste Management General Provisions

§335.41. Purpose, Scope and Applicability.

Section 335.41 sets forth procedures implementing the Texas hazardous waste program, which controls from point of generation to ultimate disposal, those wastes that have been identified by the administrator of the EPA in 40 CFR Part 261. This section is proposed to be amended by adjusting the number of gallons that determine whether a container is "empty " from 110 to 119 gallons. The term "processing" is proposed to be replaced with "treatment" for consistency of use by the TCEQ and by 40 CFR Part 264.

Subchapter C - Standards Applicable to Generators of Hazardous Waste

§335.67. Marking.

Section 335.67 sets forth provisions relating to the marking of packages or containers of hazardous waste and is proposed to be amended by changing the number of gallons used to determine the markings on the containers. The commission is proposing to change the number of gallons from 110 to 119 and how the container is to be marked. It is proposed that a generator must mark each container of 119 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR §172.304: "HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency." Markings are also proposed to include the generator's name and address, the generator EPA identification number, and the manifest tracking number.

§335.68. Placarding.

Section 335.68 sets forth provisions for placarding according to the DOT regulations and is proposed to be amended with added verbiage to be used in instances where placards are not required. If placards are not required, the proposed rules would require a generator to mark each motor vehicle according to 49 CFR §171.3(b)(1), which states that no person may accept for transportation, transport, or deliver a hazardous waste for which a manifest is required unless that person has marked each motor vehicle used to transport hazardous waste in accordance with §390.21 or §1058.2 even though placards may not be required.

§335.69. Accumulation Time.

Section 335.69 sets forth provisions for generators accumulating waste on-site and is proposed to be amended by adding subsection (m). The proposal would allow a generator to send a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste, and later receive that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10, to accumulate the returned waste on-site depending on the amount of hazardous waste on-site in that calendar month.

§335.76. Additional Requirements Applicable to International Shipments.

Section 335.76 sets forth provisions for international shipments including primary exporters and is proposed to be amended by having importers and exporters obtain the Uniform Hazardous

Waste Manifest from any source that is registered with the EPA as a supplier of manifests. In accordance with EPA requirements, it is proposed that the primary exporter must comply with manifest regulations of §335.10 except that the primary exporter must attach to the manifest, which accompanies the hazardous waste shipment, a copy of the EPA acknowledgment of consent for the shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but need not be attached to the manifest. For exports by water (bulk shipment) the primary exporter would attach the copy of the EPA acknowledgment of consent to the shipping paper.

Subchapter E - Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities

§335.112. Standards.

Subchapter E sets forth provisions for interim standards for TSDFs and is proposed to be amended by changing the title to be consistent with the term "treatment" as used by the agency. This section sets forth provisions for adoption by reference regulations contained in 40 CFR Part 265. Paragraph (4) is proposed to be amended to reference all applicable federal manifest requirements, which includes the addition of 40 CFR §260.10 and §365.70, and to update the date of the last *Federal Register* affecting the incorporated rules.

Subchapter F - Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities

§335.152. Standards.

Subchapter F sets forth provisions for the permitting standards for TSDFs and is proposed to be amended by changing the title to be consistent with the term "treatment" as used by the agency. This section sets forth provisions for adoption by reference regulations contained in 40 CFR Part 264. Paragraph (4) is proposed to be amended to reference all applicable federal manifest requirements found in Subpart E of 40 CFR Part 265.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, determined that, for the first five-year period the proposed amendments are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government. Industries or businesses that ship or transport hazardous waste may realize cost savings due to the implementation of the proposed rules, depending upon the amount of waste shipped or transported.

The proposed rules implement the EPA's new Uniform Hazardous Waste Manifest for all hazardous waste generators that transport, or offer for transport, hazardous waste for off-site treatment, recycling, storage, or disposal. The proposed rules would also revise the manifest requirements for Texas Class 1 wastes to conform with federal requirements and allow for its inclusion on the Uniform Hazardous Waste Manifest.

Under the existing rules, hazardous waste generators transporting waste to another state for treatment, recycling, storage, or disposal are required to prepare the destination states manifest form. The proposed rulemaking would adopt the EPA's Uniform Hazardous Waste Manifest that will be required to be used by all states beginning September 5, 2006. Generators of hazardous waste would then prepare one form regardless of the final destination. The Uniform Hazardous Waste Manifests are available from any source that has registered with the EPA to print and distribute the form. The cost for forms from a registered printer is unknown at this time, but is not expected to be significant. The TCEQ does not plan to register as a printer of the new forms but will obtain a limited quantity to provide the forms free of charge for any generator requiring 50 or less per year. Waste generators requiring more Uniform Hazardous Waste Manifests will have to obtain them from a registered printer for a fee.

Currently, the agency spends approximately $20,000 a year to print the current manifest form. These costs are recovered through fees collected from waste generators. The reduction in fee revenue and costs is not expected to be significant. Other units of state and local government are not expected to be affected by the proposed rules as they are not typically hazardous waste generators.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be increased efficiency for shipping and transporting hazardous waste.

The proposed rules are expected to result in cost savings for those industries and businesses that ship or transport large amounts of hazardous waste. Under the existing rules, hazardous waste generators transporting waste for treatment, recycling, storage, or disposal are required to prepare the destination states manifest form. The proposed rulemaking would adopt the EPA's Uniform Hazardous Waste Manifest that will be required to be used by all states beginning September 5, 2006. Generators of hazardous waste would then prepare one form regardless of the final destination. The Uniform Hazardous Waste Manifests are available from any source which has registered with the EPA to print and distribute the form. The cost for forms from a registered printer is unknown at this time, but is not expected to be significant. Some businesses may elect to register to print their own forms. The TCEQ does not plan to register as a printer of the new forms but will obtain a limited quantity to provide the forms free of charge for any generator requiring 50 or less per year.

Generators of hazardous waste may realize a cost savings as a result of the increased efficiency for the shipment and transportation of hazardous waste. Savings may be realized as reduced administrative costs required to obtain and prepare regulatory forms required by the receiving state(s). In Texas, there are 998 large quantity generators who would be affected by the proposed rulemaking. The cost savings realized by the generators would be dependent upon how much waste was shipped. According to the EPA, there are more than 139,000 businesses in approximately 45 industries nationwide that may receive regulatory relief from the proposed rules. These businesses ship approximately 12 million tons of hazardous waste annually, and use between two and five million hazardous waste manifests. The EPA estimates that the annual change in paperwork burden resulting from these rules will save states and industry between $12 and $20 million.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The proposed rulemaking would result in no additional costs for small and micro-businesses. Small and micro-businesses would experience the same potential cost savings as industry. Small or micro-businesses who used 50 or fewer Uniform Hazardous

Waste Manifests per year would continue to receive their forms free of charge from TCEQ.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Because these rules are not proposed to protect the environment or to reduce the risk to human health from environmental exposure, this is not a major environmental rule. Also, because the proposed rules do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state the proposed rules are not a major environmental rule. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because the hazardous waste manifest changes will be implemented by the EPA on September 5, 2006, and these proposed changes conform state rules to the federal changes, and the Texas Class 1 waste manifest changes are not proposed to be more stringent, but to conform with federal requirements. Because the additional definitions define words consistent with prior agency practice, they do not result in more stringent regulation. Since these proposed rules are not more stringent there should be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state. In addition, these rules would not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose a rule solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these proposed rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The proposed rules will substantially advance this stated purpose by proposing federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the rule language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations. There is no burden on private real property because the hazardous waste manifest changes will be implemented by the EPA on September 5, 2006, and these proposed changes conform state rules to the federal changes, and the Texas Class 1 waste manifest changes are not proposed to be more stringent, but to conform with federal requirements. Also, the new definitions define words consistent with prior agency practice, and do not result in more stringent regulation. The subject regulations do not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission prepared a consistency determination for the rules under 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the rulemaking is governing emissions of air pollutants to protect and enhance air quality in the coastal area so as to protect coastal natural resource areas and promote the public health, safety, and welfare. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies.

SUBMITTAL OF COMMENTS

Comments may be submitted to Holly Vierk, MC 205, Texas Register Team, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-060-335-PR. Comments must be received by 5:00 p.m., April 24, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information or questions concerning this proposal, please contact Ellette Vinyard, Permitting and Remediation Support, at (512) 239-6085.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §§335.1, 335.10 - 335.12, 335.15

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

(1) - (4) (No change.)

(5) Activities associated with the exploration, development, and protection of oil or gas or geothermal resources--Activities associated with:

(A) - (C) (No change.)

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency [~~EPA~~] in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 *et seq*.).

(6) Administrator--The administrator of the United States Environmental Protection Agency [~~EPA~~] or his designee.

(7) - (11) (No change.)

(12) Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

(A) - (D) (No change.)

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler [~~Variance to be Classified as a Boiler~~]).

(13) Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(14) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(15) Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(16) [~~(13)~~] Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(17) [~~(14)~~] Certification--A statement of professional opinion based upon knowledge and belief.

(18) [~~(15)~~] Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(19) [~~(16)~~] Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous [~~Hazardous~~], Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(20) [~~(17)~~] Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(21) [~~(18)~~] Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(22) [~~(19)~~] Closure--The act of permanently taking a waste management unit or facility out of service.

(23) [~~(20)~~] Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person[~~, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex~~].

(24) [~~(21)~~] Component--Either the tank or ancillary equipment of a tank system.

(25) [~~(22)~~] Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(26) [~~(23)~~] Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(27) [~~(24)~~] Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(28) [~~(25)~~] Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title (relating to Standards).

(29) [~~(26)~~] Contaminant--Includes, but is not limited to, "solid waste," "hazardous waste," and "hazardous waste constituent" as defined in this subchapter; [~~,~~] "pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.431; [~~,~~] "hazardous substance" as defined in THSC, §361.003; [~~,~~] and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.268.

(30) [~~(27)~~] Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater, or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(31) [~~(28)~~] Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(32) [~~(29)~~] Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(33) [~~(30)~~] Corrective action management unit (CAMU)--An area within a facility that is designated by the commission under 40 Code of Federal Regulations Part 264, Subpart S, for

the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031(Corrective Action Related to Hazardous Waste) [(~~Corrective Action related to Hazardous Waste~~)]. A CAMU shall only be used for the management of remediation wastes in accordance with implementing such corrective action requirements at the facility.

(34) [(~~31~~)] Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(35) [(~~32~~)] Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(36) [(~~33~~)] Designated facility--A Class 1 or hazardous waste treatment, storage, [~~processing,~~] or disposal facility which has received a United States Environmental Protection Agency [~~an EPA~~] permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 270 and 124; a permit from a state authorized in accordance with 40 CFR Part 271 (in the case of hazardous waste); a permit issued in accordance with §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste); or that is regulated under §335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §335.12(e) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(37) [(~~34~~)] Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(38) [(~~35~~)] Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(39) [(~~36~~)] Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(40) [(~~37~~)] Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(41) [(~~38~~)] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(42) [(~~39~~)] Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(43) [(~~40~~)] Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of [~~a~~] non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(44) [(~~41~~)] Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

(45) [(~~42~~)] United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(46) [(~~43~~)] United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 26l, Subpart D and to each characteristic identified in 40 CFR Part 26l, Subpart C.

(47) [(~~44~~)] United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(48) [(~~45~~)] Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency [~~EPA~~] limits for drinking water as published in the *Federal Register*.

(49) [(~~46~~)] Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(50) [(~~47~~)] Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(51) [(~~48~~)] Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(52) [~~(49)~~] Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(53) [~~(50)~~] Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions, and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(54) [~~(51)~~] Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(55) [~~(52)~~] Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(56) [~~(53)~~] Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, [~~processing,~~] or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, [~~processing,~~] and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste).

(57) [~~(54)~~] Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

(58) [~~(55)~~] Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(59) [~~(56)~~] Freeboard--The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(60) [~~(57)~~] Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(61) [~~(58)~~] Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(62) [~~(59)~~] Groundwater--Water below the land surface in a zone of saturation.

(63) [~~(60)~~] Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency [~~EPA~~] in accordance with the Resource Conservation and Recovery Act [~~RCRA~~] of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 26l. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(64) [~~(61)~~] Hazardous substance--Any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [~~CERCLA~~], 40 Code of Federal Regulations Part 302.

(65) [~~(62)~~] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency [~~EPA~~] in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act [~~RCRA~~], 42 United States Code, §§6901 *et seq*., as amended.

(66) [~~(63)~~] Hazardous waste constituent--A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR §261.24.

(67) [~~(64)~~] Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns,

injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(68) [~~(65)~~] Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(69) [~~(66)~~] In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(70) [~~(67)~~] Inactive portion--That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

(71) [~~(68)~~] Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(72) [~~(69)~~] Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(73) [~~(70)~~] Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

(74) [~~(71)~~] Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(75) [~~(72)~~] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

(76) [~~(73)~~] Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(77) [~~(74)~~] Inground tank--A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(78) [~~(75)~~] Injection well--A well into which fluids are injected. (See also "underground injection.")

(79) [~~(76)~~] Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(80) [~~(77)~~] Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(81) [~~(78)~~] International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(82) [~~(79)~~] Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(83) [~~(80)~~] Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(84) [~~(81)~~] Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(85) [~~(82)~~] Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(86) [~~(83)~~] Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(87) [~~(84)~~] Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect

continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(88) [~~(85)~~] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(89) [~~(86)~~] Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(90) [~~(87)~~] Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(91) [~~(88)~~] Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22, originated and signed by the generator or offeror, that will accompany and be used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is the EPA Form 8700-22, obtainable from any printer registered with the EPA. [~~The waste shipping document which accompanies and is used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is TNRCC-0311 (Uniform Hazardous Waste Manifest) which is furnished by the executive director or may be printed through the agency's "Print Your Own Manifest Program."~~]

~~[(89) Manifest document number--A number assigned to the manifest by the commission for reporting and recordkeeping purposes.]~~

(92) Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed on the manifest by a registered source.

(93) [~~(90)~~] Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(94) [~~(91)~~] Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

(95) [~~(92)~~] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(96) [~~(93)~~] Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency [~~EPA~~].

(97) [~~(94)~~] Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(98) [~~(95)~~] New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations(CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

(99) [~~(96)~~] Off-site--Property which cannot be characterized as on-site.

(100) [~~(97)~~] Onground tank--A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(101) [~~(98)~~] On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(102) [~~(99)~~] Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(103) [~~(100)~~] Operator--The person responsible for the overall operation of a facility.

(104) [~~(101)~~] Owner--The person who owns a facility or part of a facility.

(105) [~~(102)~~] Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure re-

quirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(106) [~~(103)~~] PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(107) [~~(104)~~] Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, [~~processing,~~] or disposal facility in accordance with specified limitations.

(108) [~~(105)~~] Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(109) [~~(106)~~] Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(110) [~~(107)~~] Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq*.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants--i.e., automotive and industrial lubricants;

(x) building materials--i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials--i.e., transformer oils and cable oils; and

(xii) used oils--See definition for "used oil" in this section.

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq* .)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(111) [~~(108)~~] Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(112) [~~(109)~~] Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(113) [~~(110)~~] Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from the Resource Conservation and Recovery Act [~~RCRA~~] and solid waste management units.

(114) [~~(111)~~] Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(115) [~~(112)~~] Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(116) [~~(113)~~] Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(117) [~~(114)~~] Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(118) [~~(115)~~] Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency [~~EPA~~] in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act [~~RCRA~~], 42 United States Code, §§6901 *et seq*., as amended.

(119) [~~(116)~~] Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(120) [~~(117)~~] Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(121) [~~(118)~~] Receiving country--A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(122) [~~(119)~~] Regional administrator--The regional administrator for the United States Environmental Protection Agency [~~EPA~~] region in which the facility is located, or his designee.

(123) [~~(120)~~] Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(124) [~~(121)~~] Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under Texas Solid Waste Disposal Act [~~TSWDA~~], §361.303 (Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title.

(125) [~~(122)~~] Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, [~~processing,~~] or disposal.

(126) [~~(123)~~] Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency [~~EPA~~] or state approved corrective action.

(127) [~~(124)~~] Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(128) [~~(125)~~] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(129) [~~(126)~~] Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(130) [~~(127)~~] Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(131) [~~(128)~~] Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(132) [~~(129)~~] Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(133) [~~(130)~~] Small quantity generator--A generator who generates less than 1,000 kilogram of hazardous waste in a calendar month.

(134) [~~(131)~~] Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion

of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with [~~the~~] Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency [~~EPA~~] in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act [~~RCRA~~], 42 United States Code, §§6901 *et seq.*, as amended; or

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §261.4(a)(1) - (19), as amended through May 11, 1999[~~,~~] (64 FR 25408), subject to the changes in this clause, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'Solid Waste' in §335.1 of this title (relating to Definitions)":

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to "40 CFR §261.38" is changed to "40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1," and the reference to "40 CFR §261.28(c)(10)" is changed to "40 CFR §261.38(c)(10)";

(II) in 40 CFR §261.38(c)(2), the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating to Definitions)," and the reference to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities)";

(III) in 40 CFR §261.38(c)(3) - (5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to "§261.6(c) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)";

(V) in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";

(VI) in 40 CFR §261.38(c)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";

(VII) in 40 CFR §261.38(c)(9), the reference to "§261.2(c)(4) of this chapter" is changed to "§335.1(129)(D)(iv) of this title (relating to Definitions)"; and

(VIII) in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munitions identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (except as pro-

vided under 40 CFR §261.4(a)(17)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(17)).

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(134)(D)(iv)

[~~Figure: 30 TAC §335.1(131)(D)(iv)~~]

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2)[~~(1)~~ - ~~(2)~~].

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Subchapter R of this chapter; and

(-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of [~~notwithstanding~~] the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt

from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(K) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities [~~Materials~~]).

(135) [~~(132)~~] Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(136) [~~(133)~~] Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(137) [~~(134)~~] Staging pile--An accumulation of solid, nonflowing remediation waste, as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(138) [~~(135)~~] Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(139) [~~(136)~~] Sump--Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, [~~processing,~~] or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(140) [~~(137)~~] Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(141) [~~(138)~~] Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(142) [~~(139)~~] Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(143) [~~(140)~~] TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(144) [~~(141)~~] Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

(145) [~~(142)~~] Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(146) [~~(143)~~] Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(147) [~~(144)~~] Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste are held during the normal course of transportation.

(148) [~~(145)~~] Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(149) [~~(146)~~] Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(150) [~~(147)~~] Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(151) [~~(148)~~] Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(152) [~~(149)~~] Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(153) [~~(150)~~] Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(154) [~~(151)~~] Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

(155) [~~(152)~~] Underground tank--A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

(156) [~~(153)~~] Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(157) [~~(154)~~] Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(158) [~~(155)~~] Universal waste handler--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(159) [~~(156)~~] Universal waste transporter--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(160) [~~(157)~~] Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(161) [~~(158)~~] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(162) [~~(159)~~] Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, conditionally exempt small quantity generator [~~Conditionally Exempt Small Quantity Generator~~] hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(163) [~~(160)~~] Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §§466 *et seq*., §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of tank or tank system as defined in this section.

(164) [~~(161)~~] Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(165) [~~(162)~~] Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(166) [~~(163)~~] Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a) Except as provided in subsection (g) and (h) of this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste treatment, [~~process,~~] storage, or disposal facility within the United States or a treatment, storage, and disposal facility that offers for transport a rejected hazardous waste load, or a primary exporter [~~exporters~~] of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1) for generators of industrial nonhazardous Class 1 waste in a quantity greater than 100 kilograms per month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste treatment, storage, [~~processing,~~] or disposal facility in Texas, a standard (nationally uniform) Resource Conservation and Recovery Act (RCRA) manifest form (United States Environmental Protection Agency (EPA) Form 8700-22), under both RCRA and Department of Transportation (DOT) statutory authorities, is prepared; [~~; a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311 is prepared;~~]

(2) (No change.)

(3) for generators of hazardous waste or Class 1 waste generated in Texas for consignment to another state the standard (nationally uniform) RCRA manifest form (EPA Form 8700-22) [~~the consignment state's manifest, if provided, or a Texas state manifest if the consignment state does not provide a manifest,~~] is prepared, unless the generator is identified in paragraph (2) of this section;

(4) for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a standard (nationally uniform) RCRA manifest form (EPA Form 8700-22) [~~a manifest from the primary exporter's state if that state supplies the manifest form and requires its use or a manifest from any source if the primary exporter's state does not supply the manifest form~~]; and

(5) a generator designates on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternate facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Alternate Facility." [~~"Special Handling Instructions and Additional Information."~~] If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste;

(6) (No change.)

(b) Generators may obtain the manifest from any source that is registered with the EPA as a supplier of manifests. A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA director of the Office of Solid Waste to do so under 40 Code of Federal Regulations (CFR) §262.21.

[(b) The manifest shall contain the following information.]

[(1) The manifest shall contain the generator's United States Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest by the generator. This requirement does not apply if the waste being shipped is nonhazardous or if the generator is a conditionally exempt small quantity generator of hazardous waste.]

[(2) The manifest shall contain the total number of pages used to complete the manifest, plus the number of continuation sheets, if any (page 1 of ____).]

[(3) The manifest shall contain the name, mailing address, and telephone number of the generator.]

[(4) The manifest shall contain the telephone number where an authorized agent of the generator may be reached in the event of an emergency.]

[(5) The manifest shall contain the generator's TNRCC registration and/or permit number. Conditionally exempt small quantity generators (CESQGs) of hazardous waste or industrial generators of less than 100 kg per month of nonhazardous Class 1 waste and less than CESQG limits of hazardous waste that are exempt from manifesting may voluntarily choose to manifest their hazardous or Class 1 industrial nonhazardous waste. Such exempt generators may utilize the letters "CESQG" for their TNRCC generator registration number.]

[(6) The manifest shall contain the first transporter's company name.]

[(7) The manifest shall contain the first transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous or the transporter is a conditionally exempt small quantity generator transporting only his own hazardous waste.]

[(8) The manifest shall contain the first transporter's state registration number. Conditionally exempt small quantity generators who are not required to notify of their transportation activities as specified in §335.6(d) of this title (relating to Notification Requirements) may use the letters "CESQG" as the TNRCC transporter's registration number when transporting their own hazardous or Class 1 nonhazardous waste.]

[(9) The manifest shall contain a telephone number where an authorized agent of first transporter may be reached in the event of an emergency.]

[(10) The manifest shall contain the second transporter's company name.]

[(11) The manifest shall contain the second transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is non-hazardous.]

[(12) The manifest shall contain the second transporter's state registration number.]

[(13) The manifest shall contain a telephone number where an authorized agent of the second transporter may be reached in the event of an emergency.]

[(14) The manifest shall contain the company name and site address of the facilities designated to receive the waste identified on the manifest and an alternate facility, if designated. Except as provided otherwise in §335.78 of this title for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, generators shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof.]

[(15) The manifest shall contain the designated facility's EPA 12-digit identification number; however, this requirement does not apply if the waste being shipped is non-hazardous.]

[(16) The manifest shall contain the TNRCC storage, processing, or disposal facility registration and/or permit number.]

[(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other waste, as required by United States Department of Transportation(DOT) regulations (49 Code of Federal Regulations (CFR) §172.201(a)(1)), the TNRCC has added an HM column on the manifest before the DOT description. When a waste shipment consists of both federally regulated materials and state-regulated wastes, the HM column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials.]

[(18) The manifest shall contain the DOT proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 CFR Parts 171-177. If the shipment contains non-hazardous waste solely regulated by the TNRCC, then the TNRCC waste classification code description should be used.]

[(19) The manifest shall contain the number of containers for each waste and the appropriate abbreviation from Table 1 from §335.30 of this title (relating to Appendix I) for the type of container.]

[(20) The manifest shall contain the total quantity of each waste described on each line.]

[(21) The manifest shall contain the unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 CFR Parts 264 or 265.]

[(22) The manifest shall contain the TNRCC waste classification code assigned to the waste by the generator.]

[(23) The manifest shall contain a certification by the generator stating: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations, including applicable state regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; or, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."]

[(24) If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space provided below the word "highway". If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space provided below the word "highway."]

(c) All manifests for hazardous wastes must be prepared according to the instructions found in the Appendix to 40 CFR Part 262, and must also contain the Texas Waste Code for each waste. Manifests for Class 1 wastes must be prepared according to the instructions found in the Appendix to 40 CFR Part 262 (pre-printed on the back of the Uniform Hazardous Waste Manifest) with the addition of the Texas Waste Codes for each waste. When itemizing Class 1 waste, the TCEQ solid waste registration numbers will be used when EPA identification numbers are not required.

[(c) The manifest shall consist of at least the number of copies which will provide the generator, each transporter, the owner or operator of the storage, processing, or disposal facility and in the case of hazardous waste exports, the United States customs official, with one copy each for their records and another copy to be returned to the generator.]

(d) At the time of waste transfer, the generator shall:

(1) use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered to facilities that are authorized to operate under an approved state program or the federal program; and

(2) ensure that all hazardous and Class 1 wastes offered for transportation are accompanied by a manifest except shipments subject to subsections (g) and (h) of this section or shipments by rail or water, as specified in subsections (e) and (f) of this section.

[(1) sign the manifest by hand;]

[(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;]

[(3) retain one copy, in accordance with §335.13(i) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste); and]

[(4) give the transporter the remaining copies of the manifest.]

(e) For shipments of [hazardous waste or] Class 1 waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(f) - (g) (No change.)

(h) No manifest and no marking in accordance with §335.67(b) of this title (relating to Marking) [(related to Marking)] is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste.

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste [exporters of hazardous waste]) to an off-site treatment, storage, [processing,] or disposal facility, unless the transporter:

(1) complies with §335.10 of this title; and

[(1) obtains a manifest completed by the generator or primary exporter where appropriate in accordance with §335.10 of this title;]

[(2) upon receipt and prior to shipment, signs and dates the manifest acknowledging the acceptance of waste from the generator or primary exporter where appropriate;]

[(3) returns a signed copy to the generator or primary exporter where appropriate before leaving the generator's property; and]

(2) [(4)] in the case of hazardous waste exports, ensures [knows] that the shipment conforms to the requirements set forth in the regulations contained in 40 Code of Federal Regulations (CFR) §263.20[(a), as amended and adopted through April 12, 1996, at 61 FedReg 16290].

(b) A transporter may not cause, suffer, allow, or permit the delivery of a shipment of hazardous or Class 1 waste to another designated transporter or to a treatment, storage, or disposal facility unless accompanied by a standard (nationally uniform) Resource Conservation and Recovery Act (RCRA) manifest form (United States Environmental Protection Agency (EPA) Form 8700-22) prepared according to §335.10 of this title and complies with 40 CFR Part 263.

[(b) The transporter shall ensure that the manifest accompanies the municipal hazardous waste or Class 1 waste.]

[(c) No transporter may cause, suffer, allow, or permit the delivery of a shipment of hazardous waste or Class 1 waste to another transporter designated on the manifest, unless the transporter:]

[(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the manifest;]

[(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste);]

[(3) gives the remaining copies of the manifest to the accepting transporter; and]

[(4) in the case of hazardous waste exports, ensures that a copy of the EPA acknowledgment of consent also accompanies the hazardous waste.]

[(d) No transporter may cause, suffer, allow, or permit the delivery of a shipment of municipal hazardous waste or Class 1 waste to a treatment, storage, processing, or disposal facility, unless the transporter:]

[(1) obtains the date of delivery and the handwritten signature on the manifest of the owner or operator of the facility designated on the manifest;]

[(2) retains one copy of the manifest in accordance with §335.14(a) of this title; and]

[(3) gives the remaining copies of the manifest to the owner or operator of the facility designated on the manifest.]

(c) [~~(e)~~] The requirements of subsections (b) and (d) [~~(b) - (d) and (f)~~] of this section do not apply to water (bulk shipment) transporters if:

(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;

(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste;

(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest or the shipping paper;

(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste).

(d) [~~(f)~~] For shipments involving rail transportation, the requirements of subsections (b) - (e) of this section do not apply and the following requirements do apply.

(1) When accepting Class 1 waste from a non-rail [~~nonrail~~] transporter, the initial rail transporter must:

(A) sign and date, the manifest acknowledging acceptance of the waste;

(B) return a copy of the manifest to the non-rail [~~nonrail~~] transporter;

(C) forward at least three copies of the manifest to:

(i) the next non-rail transporter, if any;

(ii) the designated facility, if the shipment is delivered to that facility by rail; or

(iii) the last rail transporter designated to handle the waste in the United States;

(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering Class 1 waste or municipal hazardous waste to the designated facility, a rail transporter must:

(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and

(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title.

(4) When delivering hazardous waste or Class 1 waste to a non-rail [~~nonrail~~] transporter, a rail transporter must:

(A) obtain the date of delivery and the handwritten signature of the next non-rail [~~nonrail~~] transporter on the manifest; and

(B) retain a copy of the manifest in accordance with §335.14(c) of this title.

(5) Before accepting municipal hazardous waste or Class 1 waste from a rail transporter, a non-rail [~~nonrail~~] transporter must sign and date the manifest and provide a copy to the rail transporter.

(e) [~~(g)~~] Transporters who transport hazardous waste or Class 1 waste out of the United States shall comply with manifest requirements according to §335.10 of this title and 40 CFR Part 263. [~~:~~]

[~~(1) indicate on the manifest the date the municipal hazardous waste or Class 1 waste left the United States under the item labeled "special handling instructions and additional information";~~]

[~~(2) sign the manifest and retain one copy in accordance with §335.14(c) of this title;~~]

[~~(3) return a signed copy of the manifest to the generator or primary exporter where appropriate; and~~]

[~~(4) give a copy of the manifest to a United States customs official at the point of departure from the United States.~~]

(f) [~~(h)~~] The transporter must deliver the entire quantity of municipal hazardous waste or Class 1 waste which he has accepted from a generator or a transporter to:

(1) the designated facility listed on the manifest;

(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;

(3) the next designated transporter; or

(4) the place outside the United States designated by the generator.

(g) [~~(i)~~] If the transporter cannot deliver the waste in accordance with subsection (h) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions. [~~If the transporter cannot deliver the waste in accordance with subsection (h) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.~~]

(h) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(1) for a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required;

(2) for a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description

of the rejection, and the name, address, phone number, and EPA identification number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment.

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities.

(a) No owner or operator of a treatment, storage, [~~processing,~~] or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), for off-site treatment, storage, [~~processing,~~] or disposal unless:

(1) a manifest accompanies the shipment which designates that facility to receive the waste; [~~and~~]

(2) the manifest complies with §335.10 of this title and 40 Code of Federal Regulations(CFR) Part 264;

[~~(2) the owner or operator signs the manifest and immediately gives at least one copy of the signed manifest to the transporter; and~~]

(3) the owner or operator retains one copy of the manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities);

(4) within 30 days after the delivery, the owner or operator sends a copy of the manifest to the generator or primary exporter where appropriate; and

(5) in the case of hazardous waste exports, a copy of the United States Environmental Protection Agency (EPA) [~~EPA~~] acknowledgment of consent also accompanies the waste and the owner or operator has no knowledge that the shipment does not conform to the EPA acknowledgment of consent.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class 1 waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall process the manifest in accordance with §335.10 of this title and comply with 40 CFR Part 264. [~~:~~]

[~~(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste or Class 1 waste covered by the manifest or the shipping paper was received;~~]

[~~(2) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);~~]

[~~(3) within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and~~]

[~~(4) retain at the facility a copy of each shipping paper and manifest in accordance with §335.15(a) of this title.~~]

(c) If a facility receives hazardous waste or Class 1 waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment)[~~,~~] by a shipping paper, the owner or operator, or his agent[~~,~~] must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) Manifest discrepancies are:

(A) significant differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(B) rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, and disposal facility cannot accept; or

(C) container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR §261.7(b).

(2) Significant differences in quantity are for bulk weight, variations greater than 10% in weight; and for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(3) Significant differences in type are obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

[~~(1) Manifest discrepancies are differences between the quantity or type of hazardous waste or Class 1 waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste or Class 1 waste a facility actually received. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:~~]

[~~(A) for bulk weight, variations greater than 10% in weight; and~~]

[~~(B) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.~~]

(4) [~~(2)~~] Upon discovering a significant difference in quantity or type [~~discrepancy~~], the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 CFR [~~Code of Federal Regulations(CFR)~~] §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

(d) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460.

[~~(d) Within three working days of the receipt of a shipment subject to 40 CFR Part 262, Subpart H, concerning transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division(2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries, as defined under 40 CFR §262.81. The~~

~~original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.]~~

(e) The guidelines for rejecting waste are as follows.

(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR §261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste.

(A) If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(B) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (2) or (3) of this subsection.

(2) Except as provided in subsection (e)(3) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest as set in §335.10 of this title.

(3) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility.

(4) Except as provided in paragraph (5) of this subsection, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with §335.10 of this title.

(5) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest designating the generator as the alternate facility. The facility must retain a copy for its records then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest.

(6) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR §261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to the amendments.

§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities.

This section applies to owners and operators who receive hazardous or Class 1 waste from off-site sources or who have notified that they intend to receive hazardous or Class 1 waste from off-site sources.

(1) The owner or operator of the treatment, storage, [~~processing,~~] or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator or primary exporter where appropriate.

(2) Except as provided in paragraph (6) of this section or as provided in §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), the owner or operator shall prepare a complete and correct Monthly Waste Receipt Summary for all manifested and unmanifested hazardous or Class 1 waste shipments received. The Monthly Waste Receipt Summary shall be submitted electronically, using software provided by the executive director. Upon written request by the receiver, authorization may be given by the executive director to use paper forms or an alternative reporting method. The Monthly Waste Receipt Summary shall be submitted to the executive director on or before the 25th of each month for wastes or manifests received during the previous month. (The appropriate abbreviations for method of treatment, storage, [~~processing,~~] and disposal of waste and for units of measure may be found on the form or accompanying instructions.) Any owner or operator of a treatment, storage, [~~processing,~~] or disposal facility required to comply with this paragraph [~~subsection~~] shall prepare and submit a Monthly Waste Receipt Summary each month even if no waste was received.

(3) If a facility accepts for treatment, storage, or disposal any hazardous waste or Class 1 waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and if the waste is not excluded from the manifest requirement of this chapter, then the owner or operator must prepare and submit a letter to the executive director within 15 days after receiving the waste. The unmanifested waste report must contain the following information: [~~The owner or operator shall submit a report on forms provided or approved by the executive director summarizing the types and volumes of any hazardous waste received without manifests, or, in the case of shipments by rail or water (bulk shipments), without shipping papers. This report shall be submitted within 15 days of receiving the waste, regardless of quantity, and shall include the following information:~~]

(A) the United States Environmental Protection Agency (EPA) [~~EPA~~] identification number, name, and address of the facility;

(B) - (C) (No change.)

(D) a description and the quantity of each unmanifested hazardous waste the facility received which was not accompanied by a manifest;

(E) the method of treatment, storage, [~~processing,~~] or disposal for each hazardous waste;

(F) (No change.)

(G) a brief explanation of why the waste was unmanifested [~~unaccompanied by a manifest~~], if known.

(4) The owner or operator shall retain a copy of each summary required by paragraphs (2) and (3) of this section [~~subsection~~] for a minimum of three years from the date of each summary.

(5) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Commission on Environmental Quality
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SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

30 TAC §335.41

STATUTORY AUTHORITY:

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.41. Purpose, Scope and Applicability.

(a) (No change.)

(b) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities); Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Treatment, Storage, [~~Processing,~~] or Disposal Facilities); §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities); and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities) do not apply to an owner or operator of a totally enclosed treatment facility, as defined in §335.1 of this title (relating to Definitions).

(c) - (e) (No change.)

(f) The following requirements apply to residues of hazardous waste in containers.

(1) Subchapters B - F and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste, Treatment, Storage, [~~Processing,~~] or Disposal Facilities; and Land Disposal Restrictions) do not apply to any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in paragraph (2) of this subsection. This exemption does not apply to any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty.

(2) For purposes of determining whether a container is empty under this subsection, the following provisions apply:

(A) a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) - (ii) (No change.)

(iii) no more than 3.0% by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 [~~110~~] gallons in size, or no more than 0.3% by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 [~~110~~] gallons in size;

(B) - (C) (No change.)

(g) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

30 TAC §§335.67 - 335.69, 335.76

STATUTORY AUTHORITY:

The amendments are proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.67. Marking.

(a) (No change.)

(b) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each container of 119 [~~110~~] gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR §172.304: HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency (EPA) [~~EPA~~].
Figure: 30 TAC §335.67(b)

§335.68. Placarding.

Before transporting or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 Code of Federal Regulations (CFR) Part 172, Subpart F. If placards are not required, a generator must mark each motor vehicle according to 49 CFR §171.3(b)(1), which states that no person may accept for transportation, transport, or deliver a hazardous waste for which a manifest is required unless that person has marked each motor vehicle used to transport hazardous waste in accordance with §390.21 or §1058.2 even though placards may not be required.

§335.69. Accumulation Time.

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (k) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

(A) - (C) (No change.)

(D) the waste is placed in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) (No change.)

(ii) documentation that the unit is emptied at least once every 90 days;[.]

(2) - (4) (No change.)

(b) (No change.)

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste [~~Management~~] in General) applicable to generators of Class 1 waste.

(d) A generator, other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 CFR §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) of this section provided he:

(1) complies with 40 CFR §§265.171, 265.172, and 265.173(a), as adopted by reference under §335.112(a) of this title (relating to Standards); and

(2) (No change.)

(e) (No change.)

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) - (3) (No change.)

(4) the generator complies with the requirements of:

(A) subsection [~~subsections~~] (a)(2) and (3) of this section;

(B) - (C) (No change.)

(5) the generator complies with the following requirements.[:]

(A) - (C) (No change.)

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows.[:]

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.[;]

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.[;]

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its [~~their~~] 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) identification number [~~Identification Number~~] of the generator;

(II) - (V) (No change.)

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms [~~kg~~] or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(i) (No change.)

(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) the generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling;

(2) - (4) (No change.)

(k) - (l) (No change.)

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) may accumulate the returned waste on-site in accordance with subsections (a) and (b) or (d), (e), and (f) of this section depending on the amount of hazardous waste on-site in that calendar month.

§335.76. Additional Requirements Applicable to International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, [~~as amended and adopted through April 12, 1996 (61 FR 16290) provide otherwise,~~] a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title [~~(relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste)~~] and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). Exports of hazardous waste are prohibited unless:

(1) - (2) (No change.)

(3) a copy of the United States Environmental Protection Agency (EPA) [~~EPA~~] acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(4) (No change.)

(5) the primary exporter complies with the manifest requirements of §335.10[~~(a) - (d)~~] of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:

(A) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and

(B) the primary exporter may obtain the manifest from any source that is registered with the EPA as a supplier of manifests.

~~[(A) in lieu of the name, site address, and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;]~~

~~[(B) in lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;]~~

~~[(C) in special handling instructions and additional information, the primary exporter must identify the point of departure from the United States;]~~

~~[(D) the following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form, as set out in §335.10(b)(23) of this title: "and conforms to the terms of the attached EPA acknowledgment of consent";]~~

~~[(E) the primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in §335.12(c)(1) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) as the subsection applies to hazardous waste between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste;]~~

~~[(F) in lieu of the requirements of §335.10(a) of this title, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:]~~

~~*[(i)* renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with the regulations contained in 40 CFR §262.53(c), which are in effect as of November 8, 1986, and obtain an EPA acknowledgment of consent prior to delivery; or]~~

~~*[(ii)* instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and]~~

~~*[(iii)* instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;]~~

~~[(G) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and]~~

~~[(H) the primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the United States customs official at the point the hazardous waste leaves the United States in accordance with §335.11(g)(4) of this title.]~~

(c) (No change.)

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title for the manifest except:

(1) - (2) (No change.)

(3) a person who imports hazardous waste may obtain the Uniform Hazardous Waste Manifest from any source that is registered with the EPA as a supplier of the manifests. [~~a person who imports hazardous waste must obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.~~]

(e) - (g) (No change.)

(h) Transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development are subject to 40 CFR Part 262, Subpart H, which is adopted by reference as amended and adopted in the CFR through April 12, 1996 (61 FR 16290)[~~, at 61 FedReg 16290~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601531
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-0177

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SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.112

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended as indicated in each paragraph of this subsection:

(1) - (3) (No change.)

(4) Subpart E - Manifest System, Recordkeeping and Reporting (as amended through June 16, 2005 (70 CFR 35037)). [~~(as amended through December 8, 1997 (62 FR 64636)), except 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77.~~]

(5) Subpart F - Groundwater Monitoring (as amended through October 22, 1998[~~,~~] (63 FR 56709)), except 40 CFR §265.90 and §265.94;

(6) Subpart G - Closure and Post-Closure (as amended through October 22, 1998[~~,~~] (63 FR 56709)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H - Financial Requirements (as amended through September 16, 1992 (57 FR 42832)); except 40 CFR §§265.140, 265.141, 265.142(a)(2), 265.142(b) and (c) [~~(b) - (c)~~], 265.143(a) - (g), 265.144(b) and (c) [~~(b) - (c)~~], 265.145(a) - (g), 264.146, 265.147(a) - (d), 265.147(f) - (k), and 265.148 - 265.150 [~~265.148, 265.149, and 265.150~~];

(8) - (12) (No change.)

(13) Subpart N - Landfills (as amended through July 10, 1992 (57 FR 30658)), except 40 CFR §§265.301(f) - [~~265.301~~](i), 265.314, and 265.315;

(14) - (19) (No change.)

(20) Subpart BB - Air Emission Standards for Equipment Leaks (as amended through April 26, 2005 (69 FR 22601)) [~~December 8, 1997 (62 FR 64636))~~];

(21) - (24) (No change.)

(b) The regulations of the United States Environmental Protection Agency (EPA) [~~EPA~~] that are adopted by reference in this section are adopted subject to the following changes.

(1) - (2) (No change.)

(3) Reference to Resource Conservation and Recovery Act [~~RCRA~~], §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) - (I) (No change.)

(J) 40 CFR §270.28 is changed to §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(K) - (L) (No change.)

(5) - (6) (No change.)

(7) Reference to 40 CFR §§265.71, 265.72, 265.76, and 265.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

(8) - (10) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601532

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-0177

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SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.152

STATUTORY AUTHORITY:

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) - (3) (No change.)

(4) Subpart E - Manifest System, Recordkeeping, and Reporting (as amended through June 16, 2005 (70 FR 35037)); [~~December 8, 1997 (62 FR 64636)), except 40 CFR §§264.71, 264.72, 264.76 and 264.77~~] facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G - Closure and Post-Closure (as amended through October 22, 1998[~~,~~] (63 FR 56709)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H - Financial Requirements (as amended through June 10, 1994 (59 FR 29958)); except 40 CFR §§264.140, 264.141, 264.142(a)(2), 264.142(b) and (c) [~~(b) - (c)~~], 264.143(a) - (h), 264.144(b) and (c) [~~(b) - (c)~~], 264.145(a) - (h), 264.146, 264.147(a) - (d), 264.147(f) - (k), and 264.148 - 264.151 [~~264.148, 264.149, 264.150, and 264.151~~]; and subject to the following limitations: facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a), 264.144(a), and 37.6031(c) of this title (relating to Financial Assurance Requirements for Liability);

(7) - (22) (No change.)

(b) (No change.)

(c) The regulations of the United States Environmental Protection Agency (EPA) [~~EPA~~] that are adopted by reference in this section are adopted subject to the following changes.

(1) - (2) (No change.)

(3) Reference to Resource Conservation and Recovery Act [~~RCRA~~], §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (relating to Corrective Action Relating to Hazardous Waste).

(4) - (6) (No change.)

(7) Reference to 40 CFR §§264.71, 264.72, 264.76, and 264.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

(8) - (10) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601533
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 239-0177

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.35

The Texas Youth Commission (the commission) proposes an amendment to §81.35, concerning Rights of Victims. The amendment to the section will include confidentiality on information in a victim's impact statement or information submitted in the preparation of a victim impact statement regarding the victim's name, social security number, address, or any other identifying information, regardless of whether a victim has filed a written, formal request to allow public access of the information held to be disclosed.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. In addition, any victim involvement while the youth is in the commission's custody is confidential.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the protection of victims while the youth is in the commission's custody. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Family Code, §57.002, which provides the commission with the authority to provide specific rights within the juvenile justice system to victims.

The proposed rule affects the Human Resources Code, §61.034.

§81.35. Rights of Victims.

(a) (No change.)

(b) Applicability. Rules governing confidentiality of youth records can be found in [~~(GAP)~~] §99.1 of this title regarding confidentiality of a youth's alcohol and drug abuse [~~(relating to Confidentiality Regarding Youth Alcohol and Drug Abuse)~~] and [~~(GAP)~~] §99.9 of this title regarding access to youth's information and records [~~(relating to Access to Youth Information and Records)~~].

(c) Explanation of Terms Used.

(1) Victim--a person who as the result of the delinquent conduct of a child suffers a financial [~~pecuniary~~] loss or personal injury or harm.

(2) Close relative of a deceased victim--a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

(3) Guardian of a victim--a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetence of the victim.

(d) (No change.)

(e) Victim Confidentiality.

(1) Information in a victim impact statement or information submitted in the preparation of a victim impact statement is confidential with regard to the victim's name, social security number, address, or any other identifying information, regardless of whether a victim has filed a written, formal request to allow public access of the information held to be disclosed.

(2) Any victim involvement while the youth is in TYC custody is confidential.

(f) [~~(e)~~] Victim's Right to Information.

(1) A victim may request, in writing, any of the information listed below:

(A) information concerning [~~of~~] the procedures for release or transfer of the youth from one program placement to another including to the custody of the pardons and paroles division of the Texas Department of Criminal Justice (TDCJ) for parole;

(B) notification of the proceedings for release under supervision including release on parole status, or release to a non-institutional community placement, or transfer to TDCJ for parole concerning the youth; and

(C) notification of the youth's release under supervision including release on parole status, or release to a non-institutional community placement, or transfer to TDCJ for parole.

(2) The requested information, if appropriate, will be sent to the victim at his or her most current address on file by TYC staff at the youth's placement program or administrator of victim services.

(3) For a victim who has requested information, the appropriate TYC staff MAY reveal only the following:

(A) youth is under TYC's jurisdiction[~~, minimum length of stay, and the committing offense~~];

(B) the minimum length of stay and/or the minimum period of confinement;

(C) the committing and classifying offense in which the victim was involved;

(D) [~~(B)~~] conditions of parole supervision (except specialized treatment);

(E) [~~(C)~~] information about a TYC administrative hearing for the offense in which the victim was involved;

(F) [~~(D)~~] that the youth has been transferred to another location and the name of that location unless the program is only for substance abuse treatment; [~~and~~]

(G) [~~(F)~~] the name of the youth's caseworker or parole officer; and [~~officer.~~]

(H) information about TYC's Resocialization program (do not reveal specific information regarding the youth's treatment).

(g) [~~(f)~~] Victim's Right to Participation.

(1) A victim may provide to TYC for inclusion in the youth's masterfile information to be considered by the Commission before the release under supervision including release on parole status, or release to a non-institutional community placement, or TDCJ transfer for parole.

(2) If the victim requests in writing and receives permission to provide input in person, he or she may participate in a youth's staffing for release under supervision (home on parole status), or movement to a non-institutional community placement, or transfer to TDCJ parole. The victim shall not be allowed to attend the entire staffing regarding the youth.

(3) Victims who appear in person will be provided a waiting area separate from any location where they might encounter youth.

(h) [~~(g)~~] Victim Appeal. The victim has not right of appeal in any TYC decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601551
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 424-6301

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE THEFT PREVENTION AUTHORITY

43 TAC §57.36

The Automobile Theft Prevention Authority (ATPA) proposes amendments to §57.36, concerning the level of funding for projects receiving ATPA grant funds. ATPA has statutory authority to determine funding levels. Proposed changes to subsection (d) include a requirement of a cash match by a grantee in order to receive ATPA funds beginning in the first year of funding by ATPA. Currently, a cash match is required only after the second year of funding. The current maximum levels of funding are not changed, and grantees funded at an 80% level will be able to apply for additional funding if needed. Subsection (e) is amended to require that the cash match must be expended before any ATPA funds are used, beginning in the first year of funding. In this manner, ATPA hopes to encourage a minimal level of self-funding starting with new grantees the first year of funding. Match funding should enable ATPA to spread its funding across more grantees and provide sufficient ATPA funding for successful projects that should be continued at current activity levels or expanded. Other changes in text are proposed for grammar, consistency and format.

Susan Sampson, Director of the ATPA, has determined that for each year of the first five years that the proposed amendments will be in effect, there may be some fiscal implications to state and local governments who are ATPA grantees, as a result of enforcing or administering the amended rule. An actual dollar amount cannot be determined. The fiscal implications for a particular governmental body will be determined by the amount of funds requested by a governmental body above the funding level of the grantee's award and the requirement that the cash match contributions be expended prior to the ATPA funds awarded, for each funding year. It is not anticipated that any mandatory increase or decrease in expenses as result of these proposed amendments will occur since participation by state and local governments is permissive. There will be no other fiscal implications to state government as a result of enforcing or administering the amended rule as proposed.

Ms. Sampson has also determined that, for each year of the first five years the proposed amendments will be in effect, the public will benefit by sufficient funding from both ATPA and grantees of successful ATPA projects. Additionally, for the same period of time, Ms. Sampson has determined that there is no anticipated economic costs to persons required to comply with the amended rule, except as already explained above in the fiscal implications for governmental bodies who are ATPA grantees. For the same period, there is no anticipated adverse economic effect on small or micro businesses with the amendment as proposed.

Comments on the proposal may be submitted to Susan Sampson, Director, Automobile Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731, for a period of 30 days following publication in this issue of the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4413(37), §6(a). The ATPA interprets §6(a) as authorizing it to adopt rules implementing its statutory powers and duties, which includes determining levels of funding and conditions for ATPA grant projects as part of its plan for providing financial support to combat automobile theft and economic automobile theft as required by §7 and §8 of Article 4413(37).

The following statute is affected by the amendments to §57.36: Texas Civil Statutes, Article 4413(37) §§6(a), 7, and 8.

§57.36. Level of Funding for Grant Projects.

(a) Except as provided in subsection [~~subsections (d) and~~] (f) of this section, the level of ATPA funding for a project may not exceed the following annual rates:

(1) - (2) (No change.)

(b) - (c) (No change.)

(d) A grantee, must contribute a cash match of 20% of the total ATPA award, for each year of funding, in order to be eligible for ATPA funds [~~in an 80% funding year, may apply for additional funding above 80% of the second year award if the grantee contributes a cash match of 20% of the total ATPA award~~].

(e) A grantee awarded [~~additional~~] ATPA funds [~~as provided in subsection (d) of this section~~] must expend its 20% cash contribution prior to the expenditure of any ATPA funds.

(f) A grantee, in an 80% funding year, may apply for additional funding above 80% of the second year award,including [~~for costs incurred in conjunction with~~] the consolidation of existing grant programs or the inclusion of new agencies in a current grant program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601429
Susan Sampson
Director
Automobile Theft Prevention Authority
Earliest possible date of adoption: April 23, 2006
For further information, please call: (512) 374-5101

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS
SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §§1.122 - 1.124

The Texas Board of Architectural Examiners withdraws the proposed amendments to §§1.122 - 1.124 which appeared in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8573).

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601555
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 10, 2006
For further information, please call: (512) 305–8535

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SUBCHAPTER L. HEARINGS--CONTESTED CASES

22 TAC §1.232

The Texas Board of Architectural Examiners withdraws the proposed amendment to §1.232 which appeared in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8575).

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601556
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 10, 2006
For further information, please call: (512) 305-8535

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §3.122

The Texas Board of Architectural Examiners withdraws the proposed amendment to §3.122 which appeared in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8578).

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601560
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 10, 2006
For further information, please call: (512) 305-8535

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22 TAC §3.124

The Texas Board of Architectural Examiners withdraws the proposed amendment to §3.124 which appeared in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8579).

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601561
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 10, 2006
For further information, please call: (512) 305–8535

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.232

The Texas Board of Architectural Examiners withdraws the proposed amendment to §3.232 which appeared in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8580).

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601562
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 10, 2006
For further information, please call: (512) 305–8535

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §5.132

The Texas Board of Architectural Examiners withdraws the proposed amendment to §5.132 which appeared in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8582).

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601565
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 10, 2006
For further information, please call: (512) 305–8535

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22 TAC §5.134

The Texas Board of Architectural Examiners withdraws the proposed amendment to §5.134 which appeared in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8583).

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601566
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 10, 2006
For further information, please call: (512) 305–8535

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.242

The Texas Board of Architectural Examiners withdraws the proposed amendment to §5.242 which appeared in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8584).

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601567
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 10, 2006
For further information, please call: (512) 305–8535

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

The Texas Board of Architectural Examiners adopts an amendment to §1.5 of Chapter 1, Subchapter A, pertaining to defined terms. The proposal to amend this rule was published in the December 23, 2005, edition of the *Texas Register* (30 TexReg 8570). The amendment is being adopted without changes, and the text will not be republished.

The amendment revises the definition of the term "practice of architecture" to incorporate changes made to the statutory definition of the term by the 79th Legislature. The amendment also defines the term "regulatory approval" for purposes of the rules. The amendment also deletes the definition of the term "architect of record" to conform the rule to revisions the board proposes to the only rule that includes the term. The amendment corrects statutory cross-references and revises the defined terms "chairman" and "vice-chairman" to "chair" and "vice-chair." The amendment generally updates the rule to reflect statutory changes and changes to other rules.

The revised definition of "practice of architecture" will reflect the definition of the term as adopted by the 79th Legislature. It will also specify which of the listed activities may be performed by one who is not an architect which also reflects a legislative change. By defining the term "regulatory approval" the amended rule will provide greater direction regarding the use of the architectural seal to architects and governmental entities that review and approve architectural plans. Architects must affix a seal to plans that are issued for regulatory approval in addition to other purposes. In the past, the board received notice from registrants who indicated that it was unclear whether plans were subject to regulatory approval under certain circumstances. Repealing the definition for "architect of record" would eliminate confusion. Pursuant to another proposed rule change, the term will no longer appear in the rules. Thus, the definition would be superfluous. The revisions of the terms "chairman" and "vice-chairman" reflect a trend toward using titles that do not imply gender. The public would benefit by correcting the statutory cross-references to reflect changes made in the codification process. Without these changes, the public may be confused or misinformed by referring to obsolete statutes. The amendment will have no impact on small business.

The agency received one comment from an individual who was concerned about expert witnesses who are not architects but who testify on architectural matters. After reviewing the law, the commenter agreed with the agency that the definition of the term "practice of architecture" could not list testifying as an expert as an aspect of the practice that may be performed only by registered architects.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the practice of architecture and the administration of Subtitle B of Title 6 of the Texas Occupations Code.

The amendment, in part, implements §1051.001(7), Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601552
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 30, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 305-8535

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.21

The Texas Board of Architectural Examiners adopts an amendment to §1.21 of Chapter 1, Subchapter B, pertaining to registration by examination. The proposal to amend this rule was published in the December 23, 2005, edition of the *Texas Register* (30 TexReg 8572). The amendment is being adopted without changes, and the text will not be republished.

The amendment allows for the architectural registration of graduates from an architectural program that becomes accredited within two years after they graduate. The amendment allows for registration of candidates who were enrolled in a program while it was under evaluation for accreditation and subsequently was found to be worthy of accreditation. Those who receive an architectural education from a program that is ultimately determined to be worthy of accreditation would receive the benefit of that accreditation in seeking registration. The amendment would make the rule more equitable in that students who are enrolled in a program while it is under review would receive the benefit of accreditation based upon that review. Under the current rule,

only subsequent students would receive the benefit of accreditation, notwithstanding the fact that the program would likely be no better than it was when it was under review for accreditation. The amendment will have no impact on small business.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 and §1051.705, Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and discretion to approve the colleges or universities of architecture that provide acceptable education for registration as an architect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601553
Cathy L. Henricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 30, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 305-8535

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §1.121

The Texas Board of Architectural Examiners adopts an amendment to §1.121 of Chapter 1, Subchapter G, pertaining to compliance and enforcement. The proposal to amend this rule was published in the December 23, 2005, edition of the *Texas Register* (30 TexReg 8573). The amendment is being adopted without changes, and the text will not be republished.

The amendment restates the term "practice of architecture" as used in the section in upper case and thereby designates it as a term defined by rule.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code Annotated, which grants authority to the Board to adopt rules necessary to administer or enforce the Architects' Registration Law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601554
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 30, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 305-8535

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CHAPTER 3. LANDSCAPE ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

The Texas Board of Architectural Examiners adopts an amendment to §3.5 of Chapter 3, Subchapter A, pertaining to defined terms. The proposal to amend this rule was published in the December 23, 2005, edition of the *Texas Register* (30 TexReg 8576). The amendment is being adopted without changes, and the text will not be republished.

The amendment deletes the definition of the term "landscape architect of record" to conform to a proposed rule change which would eliminate the term from the rules. Because the term will no longer be used, it will be unnecessary for the rules to include a definition of it. The amendment also defines the term "regulatory approval" for purposes of the rules. "Regulatory approval" will mean the approval by a governmental entity of landscape architectural plans and specification for construction or occupancy. The sealing rules and other requirements are triggered by the issuance of plans and specifications for permit, regulatory approval, or construction. The purpose of the definition is to clarify the circumstances that constitute regulatory approval for purposes of those requirements. Also the rule amendment changed the defined terms "chairman" and "vice-chairman" to "chair" and "vice-chair" in order to make the title for those offices gender neutral.

The rule as amended will give registrants and the public specific direction regarding the circumstances under which landscape architectural seals must be applied to plans and specifications. The repeal of a definition for a term that likely will soon be eliminated from the rules will make the rules less confusing. Changing the presiding officers' titles to chair and vice-chair would acknowledge that either gender may serve as these officers. The amendment will have no impact on small business.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 of the Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the practice of landscape architecture.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601557
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 30, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 305-8535

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.21

The Texas Board of Architectural Examiners adopts an amendment to §3.21 of Chapter 3, Subchapter B, pertaining to registration by examination. The proposal to amend this rule was published in the December 23, 2005, edition of the *Texas Register* (30 TexReg 8577). The amendment is being adopted without changes, and the text will not be republished.

The amendment allows for the registration of graduates from a landscape architecture program that becomes accredited within two years after they graduate. The amendment allows for registration of candidates who were enrolled in a program while it was under evaluation for accreditation and subsequently was found to be worthy of accreditation. Those who receive a landscape architectural education that is ultimately determined to be worthy of accreditation would receive the benefit of that accreditation in seeking registration. The amendment would make the rule more equitable.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 and §1052.154(a)(1), Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and authority to recognize and approve landscape architectural programs which render education acceptable for registration as a landscape architect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601558
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 30, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 305-8535

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §3.121

The Texas Board of Architectural Examiners adopts an amendment to §3.121 of Chapter 3, Subchapter G, pertaining to compliance and enforcement. The proposal to amend this rule was published in the December 23, 2005, edition of the *Texas Register* (30 TexReg 8578). The amendment is being adopted without changes, and the text will not be republished.

The amendment replaces the term "landscape architecture" with the term "Landscape Architecture" to create a cross-reference to the definition of the term for purposes of Chapter 3. The amendment will more clearly reference the board's definition of the term "landscape architecture" which will help specify the intent of the rule.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 of Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601559
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 30, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 305-8535

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

The Texas Board of Architectural Examiners adopts an amendment to §5.5 of Chapter 5, Subchapter A, pertaining to defined terms. The proposal to amend this rule was published in the December 23, 2005, edition of the *Texas Register* (30 TexReg 8581). The amendment is being adopted without changes, and the text will not be republished.

The amendment deletes the definition for the term "interior designer of record." Pursuant to the proposed amendment of another rule, the term "interior designer of record" would no longer appear in the rules. The amendment defines the term "regulatory approval" as that term is used in the rules. The amendment also changes the defined terms "chairman" and vice-chairman" to "chair" and "vice-chair," respectively, in order to make the two terms gender-neutral. Defining the term "regulatory approval" will clarify the board's intent in rules which specify sealing as a prerequisite to issuing plans for regulatory approval. The board has received notice from registrants who indicated that it was unclear whether plans were subject to regulatory approval under certain circumstances. By defining the term "regulatory approval" the board explicitly states that the term refers to approval for construction or occupancy of a project. By repealing the definition for the term "interior designer of record", the public benefit will be to eliminate superfluous provisions in the board's rules. Revising the terms "chairman" and "vice-chairman" to "chair" and "vice-chair" makes those terms gender neutral. The amendment will have no impact on small business.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the practice of interior design and the administration of Subtitle B of Title 6 of the Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601563

Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 30, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 305-8535

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.31

The Texas Board of Architectural Examiners adopts an amendment to §5.31 of Chapter 5, Subchapter B, pertaining to interior design registration by examination. The proposal to amend this rule was published in the December 23, 2005, edition of the *Texas Register* (30 TexReg 8582). The amendment is being adopted without changes, and the text will not be republished. The amendment allows for the registration of graduates from an interior design program that becomes accredited within two years after they graduate.

The amendment allows for registration of candidates who were enrolled in a program while it was under evaluation for accreditation and subsequently was found to be worthy of accreditation. Those who receive an education from an interior design program that is ultimately determined to be worthy of accreditation would receive the benefit of that accreditation in seeking registration.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 and §1053.155(c)(1), Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and discretion to recognize and approve interior design educational programs acceptable to gain admission to take the registration examination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601564
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 30, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 305-8535

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL

SUBCHAPTER D. GENERAL

25 TAC §289.202

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §289.202, concerning standards for protection against radiation from radioactive materials without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5914) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The amendment adds respiratory protection definitions and requirements that are designated as compatibility items by the United States Nuclear Regulatory Commission (NRC) and because Texas is an Agreement State, these items must be adopted. The Department of State Health Services is created in Health and Safety Code Chapter 1001; therefore, the amendment changes the department name from "Texas Department of Health" to "Texas Department of State Health Services" on the forms applicable to this section. In addition, the amendment corrects references and language inconsistencies with the Texas Administrative Code. This amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, or other factors.

SECTION-BY-SECTION SUMMARY

The amendment to subsection (c) adds definitions concerning respiratory protection to clarify respiratory protection requirements. These definitions are items of compatibility with NRC. The word "registrant" is changed to "person" in the definition of dosimetry processor because dosimetry processors are no longer registered by the department. They are required to be certified by the National Voluntary Laboratory Accreditation Program, so it is unnecessary to also require them to register with the department. In addition, several definitions are revised to correct text inconsistencies with the Texas Administrative Code. The department added language to subsection (e)(3) and (5), concerning radiation protection programs (RPP), to clarify that review and implementation of the RPP must include a reevaluation of assessments made by the licensee to determine if individual monitoring is required.

The amendment revises and/or adds new requirements for subsections (f)(1)(B) and (f)(1)(B)(ii), (f)(3) and (4), and (r)(1)(D) to provide technical clarification of the shallow dose equivalent. Subsection (v) is amended to add "decontamination" because licensees should consider decontamination to reduce resuspension of radioactive material in the workplace as a means of controlling internal dose instead of using respirators. Subsection (w)(2) is added to allow the licensee to consider safety factors other than radiological factors when determining whether respirators should be used to keep the radiation dose as low as reasonably achievable. Subsection (x)(1)(A) - (B) is amended to delete obsolete references to extensions of certification and the Mine Safety and Health Administration. All such extensions have expired. The amendment revises or adds subsection (x)(1)(C)(i) and (iii) - (vi), new (x)(1)(E) - (I), and new (x)(2), (y)(2), and (ggg)(1) concerning respiratory protection. The revisions make the requirements consistent with the philosophy of controlling the sum of internal and external radiation exposure, reflect current guidance on respiratory protection from the American National Standards Institute, and are consistent with the Occupational Safety and Health Administration's respiratory protection rule. The revisions ensure worker dose will be maintained as low as

reasonably achievable. The above revisions are items of compatibility with the NRC.

Subsection (p)(3)(C) has been revised because the department no longer registers dosimetry processors. New subsection (p)(4), relating to general surveys and monitoring, is added to ensure that the personnel monitoring devices can withstand the environment in which they are used, for example, extreme hot, cold, wet, etc. The department adds language to subsection (ff)(1)(B) to recognize an existing requirement in §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material) that allows radioactive material with a half-life less than 65 days to be held in storage for decay and then disposed of without regard to its radioactivity. The amendment revised subsection (ff)(2) by changing "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality" to reflect the new department name. The amendment adds language to subsection (fff)(4) to clarify the intent to exclude those licensed in accordance with §289.254 of this title from using the provisions of this paragraph. Subsection (ggg)(5) is revised to change "TRC Form 21-2" to "BRC Form 202-2" and "TRC Form 21-3" to "BRC Form 202-3" to state the correct form number. Subsection (ggg)(8) is revised to change the reference "subsection (ddd)" to "subsection (eee)" to state the correct reference. The department name is changed from "Texas Department of Health/Bureau of Radiation Control" to "Texas Department of State Health Services/Radiation Control" on both forms for subsections (ggg)(9) and (10) to reflect the new department name. Subsection (ggg)(10), item 10B of the instructions, deletes the words "as listed in Appendix B to Part D (D, W, Y, V, or O for other)" and replaces them with "subsection (ggg)(2)(F) of this section" to state the correct reference citation. The amendment revises several subsections to correct text inconsistencies with the Texas Administrative Code. Other minor grammatical changes and reference citations are corrected throughout the section for clarification.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed amendment during the comment period, which the commission has reviewed and accepts. The commenter was Shell, Chemical LP. The commenter was not against the rules in their entirety; however, the commenter suggested a recommendation for change as discussed in the summary of comments.

Comment: Concerning the section in general, the commenter asked if it is possible to remove a good deal of the proposed verbiage on respirators by using words similar to the following; "Respirator users shall comply with all provisions specified in 29 CFR §1910.130, the Occupational Safety and Health Administration (OSHA) Respiratory Protection Standard." The commenter adds that virtually all occupational users of respirator must comply with this regulation. According to the commenter, for rescue teams and standby rescue, OSHA requires two-people on standby for each two people entering an emergency situation and states that this regulation should apply to all occupational rescuers/emergency responders. The individual adds that volunteer response organizations routinely comply with these regulations as they are best practice and then asks if this can be construed as immediately available rescue and additionally states that this would apply only to emergencies. The commenter states that OSHA regulations require a hole watch for confined space entrance and that a rescue team be readily available which is different than immediately available for rescue. According to the commenter, immediately is defined as the team geared out and ready to go which the commenter expresses would put an undue burden on most industries as the company would be paying for 6 people to stand around and do nothing, because most of the time their services will not be required. In addition, the individual states that most sites ventilate confined spaces to remove chemical dangers, so the need for immediate availability is lessened. The commenter further adds that as for employees running out of air while working in a respirator, the self-contained breathing apparatus (SCBA) is equipped with alarms to warn the user that they need to leave the area because of low air supply and airline respirators have the same type of alarms. Additionally, a hip bottle can be part of the airline respirator equipment to provide additional air should the worker need it or to allow the worker to egress from a unit under conditions in which egress from the unit following the airline out is not possible (usually a fire type situation). An employee whose job is to observe air bottle supply is part of the airline respirator use procedure. In many instances there is a backup worker wearing SCBA to provide rescue/assistance should there be a mishap.

To conclude, the commenter recommends that the commission be very careful about how regulations are worded involving rescue capability and what can be inferred from the wording about how rescue capability is provided because companies may be unintentionally caused to spend resources needlessly.

Response: The commission disagrees with the comments. The respiratory protection definitions and requirements being added are designated as compatibility items by the NRC and, because Texas is an Agreement State, these items must be adopted. No changes were made to the rule as a result of the comments.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is adopted under the Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601541
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: March 29, 2006
Proposal publication date: September 16, 2005
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.253

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the amendment to §289.253, concerning radiation safety requirements for well logging service operations and tracer studies. The amendment to §289.253 is adopted with changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5921).

BACKGROUND AND PURPOSE

The amendment is the result of a petition for rulemaking filed by a licensee and a subsequent agreement by the department to amend the rules to allow an alternate method for discarding short lived radioactive tracer materials used in oil and gas well fracturing procedures. Because this involves Class II disposal wells that are under the jurisdiction of the Texas Railroad Commission (RRC), the RRC's input and coordination has been obtained in formulating the rule amendment. A subsection on security has been amended for compatibility with the United States Nuclear Regulatory Commission (NRC) and, because Texas is an agreement state with NRC, this item must be adopted. The Department of State Health Services was created in Health and Safety Code, Chapter 1001; therefore, the amendment changes the department name from "Texas Department of Health" to "Department of State Health Services" in the text. The amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, or other factors.

SECTION-BY-SECTION SUMMARY

The words "licensees and registrants" were changed to "persons" in subsection (b) to clarify the intent that the rule applies to all persons who use sources of radiation and not just licensees and registrants. A definition of screenout is added in subsection (c) to clarify requirements relating to oil and gas well returns. The definition of wireline service operation is revised to clarify that an electronic service, as well as a mechanical service, may be performed in the wellbore. Language is added to subsection (d)(2)(A) to clarify which referenced rule applies to personnel and which rule applies to equipment. In subsection (d)(2)(C)(i), language is added to clarify that in the event of a screenout, material must be reversed into a preconstructed steel or lined pit. Subsection (s) concerning security at temporary job sites is revised to be consistent with NRC rules that are items of compatibility. Subsection (u) is amended to allow the injection of oil and gas well returns containing radioactive material into Class II disposal wells that have been approved to accept non-hazardous oil and gas waste by the RRC. In addition, language is added that requires the well operator to notify the licensee when a decision is made to reverse the radioactive tracer material out of a well. The requirement also states that the licensee shall be onsite and present at the well when radioactive tracer material is reversed out of the well. The department changed the agency name from "Texas Department of Health/Bureau of Radiation Control" to "Department of State Health Services/Radiation Control" to state the new department name in the text in subsection (cc)(6)(B)(viii)(III). In the plaque example in subsection (dd)(3), the department changed the agency name from "Texas Department of Health/Bureau of Radiation Control" to "Texas Department of State Health Services/Radiation Control." Other minor grammatical changes are made and reference citations are corrected for clarification.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenter was Radiation Consultants, Inc. The commenter was neither for nor against the rule in its entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §289.253(h)(1), the commenter questioned the acceptable range on survey instruments and asked if consideration had been given to making the change to require instruments to be capable of measuring up to at least 200 milliroentgens per hour (mR/hr) as opposed to the current 50 mR/hr required by rule.

Response: The commission acknowledges the comment. However, the specified acceptable range on survey instruments, up to 50 mR, is consistent with current NRC requirements and is an item of compatibility. No change was made as a result of the comment.

The department staff, on behalf of the commission, provided comments and the commission has reviewed and agrees to the following changes that will clarify the intent and improve the accuracy of the section.

Change: Concerning §289.253(c)(23), the department added commas to the phrase "containing one or more electrical conductors" in the definition of "Wireline."

Change: Concerning §289.253(d)(2)(A), the department revised the subparagraph by adding the word "respectively" at the end of the sentence to clarify which referenced rule applies to personnel and which rule applies to equipment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§289.253. Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies.

(a) Purpose. This section establishes radiation safety requirements for persons using sources of radiation for well logging service operations, including radioactive markers, mineral exploration and tracer studies.

(b) Scope. This section applies to all persons who use sources of radiation for well logging service operations, radioactive markers, mineral exploration and tracer studies. In addition to the requirements of this section, persons are subject to the requirements of §289.201

of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Material), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.226 of this title (relating to Registration of Radiation Machine Use and Services), §289.229 of this title (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, and Simulators), §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(c) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise.

(1) Energy compensation source (ECS)--A small sealed source with an activity not exceeding 100 microcurie (μCi) (3.7 megabecquerel (MBq)), used within a logging tool or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

(2) Field station (additional authorized use/storage location)--A facility where sources of radiation may be stored or used and from which equipment is dispatched to temporary job sites.

(3) Injection tool--A device used for subsurface or downhole controlled injection of radioactive tracer material.

(4) Logging assistant (equipment operator)--Any individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who performs surveys required by subsection (aa) of this section.

(5) Logging supervisor (field engineer)--The individual who provides personal supervision of the use of sources of radiation at temporary job sites.

(6) Logging tool--A device used subsurface to perform well logging.

(7) Mineral logging--Any logging performed for the purpose of mineral exploration other than oil or gas.

(8) Personal supervision--Guidance and instruction by the supervisor, who is physically present at the job site and in such proximity that visual contact can be maintained and immediate assistance given as required.

(9) Radiation safety officer--An individual named by the licensee or registrant and listed on the license or certificate of registration who has a knowledge of, responsibility for, and authority to enforce appropriate radiation protection rules, standards, and practices on behalf of the licensee and/or registrant; and who meets the requirements of subsection (r) of this section.

(10) Radioactive marker--Radioactive material placed subsurface or upon a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(11) Residential location--Any area where structures in which people lodge or live are located, and the grounds on which these structures are located including, but not limited to, houses, apartments, condominiums, and garages.

(12) Screenout--A situation in which radioactive tracer material is reversed out of an oil or gas well (well returns).

(13) Service company--Any contracted or subcontracted company that is present at the temporary job site, specifically, that company to which the licensee's equipment is connected and that is exposed to radioactive material.

(14) Source holder--A housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(15) Storage container--A container designed to provide radiation safety and security when sources of radiation are being stored.

(16) Temporary job site--A location where well logging or tracer studies are performed other than the specific location(s) listed on a license or certificate of registration.

(17) Tracer study--The release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the wellbore, at the wellhead, or adjacent formation.

(18) Transport container--A container that meets the requirements of the United States Department of Transportation (DOT) and is designed to provide radiation safety and security when sources of radiation are being transported.

(19) Tritium neutron generator target source--A tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

(20) Uranium sinker bar--A weight containing depleted uranium used to aid in the descent of a logging tool down toward the bottom of a wellbore.

(21) Wellbore--A drilled hole in which wireline service operations are performed.

(22) Well logging--All operations involving the lowering and raising of measuring devices or logging tools (that may or may not contain sources of radiation) into wellbores or cavities for the purpose of obtaining information about the well and/or adjacent formations.

(23) Wireline--An armored steel cable, containing one or more electrical conductors, used to lower and raise logging tools in the wellbore.

(24) Wireline service operation--Any mechanical or electronic service that is performed in the wellbore using devices that are lowered into the well on a wireline for purposes of evaluation.

(d) Prohibitions.

(1) No licensee shall perform well logging service operations with a sealed source(s) in any well or wellbore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well owner, drilling contractor, or land owner that specifies who will be responsible for ensuring the following requirements are met:

(A) a reasonable effort at recovery will be made in the event a sealed source is lost or lodged downhole;

(B) a person shall not attempt to recover a sealed source in a manner that, in the licensee's opinion, could result in a source rupture;

(C) in the event the environment, any equipment, or personnel are contaminated with radioactive material, decontamination

to levels specified in §289.202(f), (n), and (eee) of this title shall be performed; and

(D) the requirements of subsection (cc)(4) of this section shall be met in the event a decision is made to abandon the sealed source downhole.

(2) No licensee shall perform tracer study operations with a substance tagged with radioactive material in any well or wellbore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well owner, drilling contractor or land owner, and the service company to which the licensee's equipment is connected, as applicable, that specifies who will be responsible for ensuring the following requirements are met:

(A) in the event the service company's personnel or equipment are contaminated with radioactive material, they shall be decontaminated in accordance with §289.202(n) or (ddd) of this title before release from the job site or release for unrestricted use, respectively;

(B) in the event the well head or job site is contaminated with radioactive material, it shall be decontaminated in accordance with §289.202(ddd) of this title; and

(C) in the event radioactive material is to be reversed from the well or the well screens out, the licensee shall have established procedures and equipment or facilities to do the following:

(i) reverse material into a preconstructed steel or lined pit that is specifically established in the event of a screen out; or

(ii) reverse material into suitable transport container(s) in the event of a screen out.

(3) The licensee shall maintain, in accordance with subsection (dd)(5) of this section, a copy of the written agreement specified in paragraph (1) or (2) of this subsection.

(e) Limits on levels of radiation. Sources of radiation shall be used, stored, and transported in such a manner that the requirements of §289.202 of this title, §289.231 of this title, and §289.257 of this title, as applicable, are met.

(f) Storage precautions.

(1) Each source of radiation, except accelerators, shall be provided with a storage and/or transport container. Each container shall have a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

(2) Each area or room in which sources of radiation are stored shall be posted in accordance with §289.202(aa)(5) or §289.231(x) of this title, as applicable.

(3) Sources of radiation, except accelerators, shall be stored downhole or in a bunker in order to minimize the danger from explosion and/or fire.

(4) Sources of radiation may not be stored in residential locations. This section does not apply to storage of radioactive material in a vehicle in transit for use at temporary job sites, if the licensee complies with subsection (aa)(2) of this section.

(5) Sources of radiation in storage shall be secured to prevent tampering, or removal by unauthorized individuals.

(g) Transport precautions. Transport containers shall be locked and physically secured to the transporting vehicle to prevent shifting during transport, accidental loss, tampering, or unauthorized removal.

(h) Radiation survey instruments.

(1) The licensee or registrant shall maintain a sufficient number of calibrated and operable radiation survey instruments at each location where sources of radiation are stored or used to make physical radiation surveys as required by this section and by §289.202(p) or §289.231(s), of this title, as applicable. Instrumentation shall be capable of measuring 0.1 milliroentgen per hour (mR/hr) (1 microsievert per hour (μSv/hr)) through at least 50 mR/hr (500 μSv/hr). (Instrumentation capable of measuring 0.1 mR/hr (1 μSv/hr) through 50 mR/hr (500 μSv/hr) may not be sufficient to determine compliance with DOT requirements.)

(2) A licensee using tracer material shall have available at each additional authorized use/storage location and temporary job site additional calibrated and operable radiation survey instruments sensitive enough to detect the radioactive surface contamination limits specified in §289.202(eee) of this title.

(3) Each radiation survey instrument shall be calibrated:

(A) by a person specifically licensed or registered by the agency, another agreement state or licensing state or the United States Nuclear Regulatory Commission (NRC) to perform such service;

(B) at intervals not to exceed six months and after each survey instrument repair;

(C) for the types of radiation used and at energies appropriate for use; and

(D) at an accuracy within ±20% of the true radiation level at each calibration point.

(4) The licensee or registrant shall maintain calibration records in accordance with subsection (dd)(5) of this section.

(i) Leak testing of sealed sources.

(1) Testing and record keeping. Sealed sources shall be tested for leakage and contamination in accordance with this section and §289.201(g) of this title. The licensee shall maintain records of leak tests in accordance with subsection (dd)(5) of this section.

(2) Each energy compensation source that is not exempt from testing in accordance with §289.201(g)(2) of this title must be tested at intervals not to exceed three years. In the absence of a certificate from a transferor that a test has been made within the three years before the transfer, the energy compensation source may not be used until tested in accordance with §289.201(g) of this title.

(3) If a sealed source is found to be leaking in accordance with §289.201(g) of this title, the licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by persons specifically authorized by the agency, the NRC, an agreement state, or a licensing state, to perform such services.

(j) Quarterly inventory. Each licensee or registrant shall conduct a physical inventory to account for all sources of radiation received or possessed at intervals not to exceed three months. The licensee or registrant shall make and maintain records of inventories in accordance with subsection (dd)(5) of this section and shall include the following:

(1) the quantities and kinds of sources of radiation;

(2) the location where sources of radiation are assigned;

(3) a unique identification of each source of radiation;

(4) the date of the inventory; and

(5) the name of the individual conducting the inventory.

(k) Utilization records. Utilization records shall be maintained by each licensee or registrant in accordance with subsection (dd)(5) of this section and shall include the following information for each source of radiation:

(1) identification of each source of radiation to include:

(A) the make and model number and/or serial number (or if absent, a description) of each sealed source used; or

(B) the radionuclide and activity of tracer materials and radioactive markers used at a particular well site and the disposition of any unused tracer materials.

(2) the identity of the logging supervisor or individual who is responsible for receiving sources of radiation, to whom assigned; and

(3) the locations where used and dates of use.

(l) Design and performance criteria for sealed sources used in well logging operations.

(1) Each sealed source used in well logging applications shall meet the following minimum criteria.

(A) The sealed source is of doubly encapsulated construction.

(B) The sealed source contains radioactive material with a chemical/physical form as insoluble and nondispersible as practicable.

(C) The sealed source meets one of the following requirements:

(i) for a sealed source manufactured on or before July 14, 1989, the requirements from the United States of America Standards Institute (USASI) N5.10-1968, "Classification of Sealed Radioactive Sources," or the requirements in clause (ii) or (iii) of this subparagraph;

(ii) for a sealed source manufactured after July 14, 1989, the oil-well logging requirements from the American National Standard Institute/Health Physics Society (ANSI/HPS) N43.6-1997, "Sealed Radioactive Sources-Classification;" or

(iii) for a sealed source manufactured after July 14, 1989, the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(I) Temperature. The test source shall be held at -40 degrees Celsius for 20 minutes, 600 degrees Celsius for one hour, and then be subjected to a thermal shock test with a temperature drop from 600 degrees Celsius to 20 degrees Celsius within 15 seconds.

(II) Impact. A 5 kilogram (kg) steel hammer, 2.5 centimeters (cm) in diameter, shall be dropped from a height of 1 meter (m) onto the test source.

(III) Vibration. The test source shall be subjected to a vibration from 25 Hertz (Hz) to 500 Hz with a peak amplitude of five times the acceleration of gravity for 30 minutes.

(IV) Puncture. A 1 gram (gm) hammer and pin, 0.3 cm pin diameter, shall be dropped from a height of 1 m onto the test source.

(V) Pressure. The test source shall be subjected to an external pressure of 24,600 pounds per square inch absolute (1.695×10^7 pascals) without leakage.

(2) The requirements in paragraph (1) of this subsection do not apply to sealed sources that contain radioactive material in gaseous form.

(3) The requirements in this subsection do not apply to energy compensation sources.

(m) Labeling.

(1) Each source, source holder, or logging tool containing radioactive material in other than an exempt quantity, shall bear a durable, legible, and clearly visible marking or label that has, as a minimum, the standard radiation caution symbol with no color requirement, and the wording DANGER (or CAUTION), RADIOACTIVE--DO NOT HANDLE, NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY).

(2) The labeling specified in paragraph (1) of this subsection shall be on the smallest component, source, source holder, or logging tool, that is transported as a separate piece of equipment.

(3) Each transport container shall have permanently attached to it a durable, legible, and clearly visible label that has, as a minimum, the standard radiation caution symbol and the wording DANGER (or CAUTION), RADIOACTIVE, NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY).

(4) Each transport container shall have attached to it a durable, legible, and clearly visible label(s) that has, as a minimum, the licensee's name, address, and telephone number, the radionuclide, its activity, and assay date.

(n) Inspection and maintenance.

(1) Each licensee or registrant shall conduct, at intervals not to exceed six months, a program of visual inspection and maintenance of source holders (or sealed source, if there is no source holder), logging tools, source handling tools, storage containers, transport containers, and injection tools to assure proper labeling and physical condition. The inspection program may be performed concurrently with routine leak testing of sealed sources. Records of inspection and maintenance shall be made and maintained by the licensee or registrant in accordance with subsection (dd)(5) of this section.

(2) If any inspection conducted in accordance with paragraph (1) of this subsection reveals damage to labeling or components critical to radiation safety, the device shall be removed from service at the time the damage is discovered and until repairs have been made.

(3) Any operation, such as drilling, cutting, or chiseling on a source holder containing a sealed source, shall be performed on the source holder only by persons specifically licensed to do so by the agency, another agreement or licensing state, or the NRC. The provisions of this paragraph do not apply to logging tool recovery (fishing) operations conducted in accordance with the provisions of subsection (cc)(4) of this section.

(4) The repair, opening, or modification of any sealed source shall be performed only by persons specifically licensed to do so by the agency, another agreement or licensing state, or the NRC.

(o) Training requirements.

(1) No licensee or registrant shall permit any individual to act as a logging supervisor until such individual has met the following requirements:

(A) successfully completed an agency-accepted course or a course recognized by another agreement or licensing state, or the NRC, including at least 24 hours of formal training in the subjects outlined in subsection (dd)(1) of this section;

(B) received copies of and instruction in the following:

(i) the requirements contained in this section and the applicable subsections of §§289.201, 289.202, 289.203, and 289.231 of this title or their equivalent;

(ii) the conditions of the appropriate license or certificate of registration; and

(iii) the licensee's or registrant's operating, safety, and emergency procedures;

(C) demonstrated understanding of the requirements in subparagraphs (A) and (B) of this paragraph by successfully completing a written examination administered by the licensee or registrant;

(D) completed two months of on-the-job training under the supervision of a logging supervisor; and

(E) demonstrated through a field evaluation, competence in the use of sources of radiation, related handling tools, and the type of radiation survey instruments that will be used in the job assignment.

(2) No licensee or registrant shall permit any individual to act as a logging assistant until such individual has met the following requirements:

(A) received copies of and instruction in the applicable subsections of §§289.201, 289.202, 289.203, and 289.231 of this title or their equivalent, and the licensee's or registrant's operating, safety, and emergency procedures;

(B) demonstrated understanding of the requirements in subparagraph (A) of this paragraph by successfully completing a written examination administered by the licensee or registrant; and

(C) demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments that will be used in the job assignment.

(3) The licensee or registrant shall provide an annual radiation safety review for logging supervisors and logging assistants.

(4) Each licensee or registrant shall maintain records that document that the requirements of paragraphs (1) - (3) of this subsection are met. Such records shall be maintained in accordance with subsection (dd)(5) of this section.

(p) Operating, safety, and emergency procedures. The licensee or registrant shall maintain written operating, safety, and emergency procedures that include descriptions of and directions in at least the items listed in subsection (dd)(4) of this section.

(q) Personnel monitoring.

(1) In addition to the requirements of §289.202(p)(3) and (q) of this title or §289.231(n) and (s)(3) of this title, as applicable, no licensee or registrant shall permit any individual to act as a logging supervisor or logging assistant unless that individual wears an individual monitoring device that is processed and evaluated by an accredited National Laboratory Accreditation Program (NVLAP) processor, at all times during well logging service operations and/or tracer studies utilizing sources of radiation. Each individual monitoring device shall be assigned to and worn by only one individual. Film badges shall be replaced at least monthly. Other individual monitoring devices shall be replaced at least quarterly. After replacement, each individual monitoring device shall be returned to the supplier for processing within 14 calendar days or as soon as practicable. In circumstances that make it impossible to return each individual monitoring device to the supplier for processing within 14 calendar days, such circumstances shall be documented and available for review by the agency.

(2) When necessary in order to aid in determining the extent of an individual's exposure to concentrations of radioactive material, the agency may require a licensee or registrant to make available to the individual appropriate bioassay services and to furnish a copy of the reports of such services to the agency.

(3) Personnel monitoring records shall be maintained by the licensee or registrant in accordance with subsection (dd)(5) of this section.

(r) Radiation safety officer.

(1) A radiation safety officer (RSO) shall be designated for every license and certificate of registration issued by the agency.

(2) The RSO's documented qualifications shall include:

(A) possession of a high school diploma or a certificate of high school equivalency based on the GED test;

(B) completion of the training and testing requirements of subsection (o)(1) of this section; and

(C) two years of experience as a logging supervisor to include knowledge of well logging service operations and tracer studies.

(3) The duties of the RSO include, but are not limited to, the following:

(A) establishing and overseeing operating, safety, and emergency, and as low as reasonably achievable (ALARA) procedures, and to review them regularly to ensure that the procedures are current and conform with this chapter;

(B) overseeing and approving all phases of the training program for well logging service operations and/or tracer studies personnel so that appropriate and effective radiation protection practices are taught;

(C) ensuring that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(D) ensuring that personnel monitoring is used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by §289.203 of this title;

(E) investigating and reporting to the agency each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause, and to take steps to prevent its recurrence;

(F) having a thorough knowledge of management policies and administrative procedures of the licensee or registrant;

(G) assuming control and having the authority to institute corrective actions including shutdown of operations when necessary in emergency situations or unsafe conditions;

(H) maintaining records as required by this chapter (see subsection (dd)(5) of this section);

(I) ensuring the proper storing, labeling, transport, and use of sources of radiation, storage, and/or transport containers;

(J) ensuring that inventories are performed in accordance with subsection (j) of this section;

(K) ensuring that personnel are complying with this chapter, the conditions of the license or the registration, and the oper-

ating, safety, and emergency procedures of the licensee or registrant; and

(L) serving as the primary contact with the agency.

(s) Security.

(1) A logging supervisor must be physically present at a temporary jobsite whenever radioactive material is being handled or is not stored and locked in a vehicle or storage place. The logging supervisor may leave the jobsite in order to obtain assistance if a sealed source becomes lodged in a well.

(2) During well logging, except when sealed sources are below ground or in shipping or storage containers, the logging supervisor or other individual designated by the logging supervisor shall maintain direct surveillance of the operation to prevent unauthorized entry into a restricted area, as defined in §289.201(b) of this title, or §289.231(c) of this title, as applicable.

(t) Handling tools. The licensee shall provide and require the use of tools that will assure remote handling of sealed sources other than low activity calibration sources.

(u) Tracer studies.

(1) Appropriate protective clothing and equipment shall be used by all personnel handling radioactive tracer material. Precautions shall be taken to avoid ingestion or inhalation of radioactive material and to avoid contamination of field stations, temporary job sites, vehicles, associated equipment, and clothing.

(2) No licensee shall permit the injection of radioactive material into usable quality groundwater (3,000 parts per million (ppm) total dissolved solids or less) without prior written authorization from the agency.

(3) A licensee may discard well-logging screenouts (well returns) containing residual radioactive materials into Class II disposal wells authorized by the Texas Railroad Commission (RRC) for such residuals, provided that the following requirements are met:

(A) the total radioactive concentration of all isotopes involved in the screenout is 1000 picocuries per gram (pCi/g) or less, and the physical half-life of the radioactive material is 120 days or less;

(B) the well is licensed by the RRC to accept non-hazardous oil and gas waste; and

(C) the licensee maintains an agreement with the owner or operator to control access to the Class II disposal well until the radioactivity has decayed to unrestricted release levels.

(4) The well operator shall contact the licensee when a decision is made to reverse the radioactive tracer material out of a well. The licensee shall be on site and present at the well when radioactive tracer material is reversed out of a well.

(v) Particle accelerators. No licensee or registrant shall permit above-ground testing of particle accelerators that results in the production of radiation except in areas or facilities controlled or shielded to meet the requirements of §289.202(f) or (n) of this title, or §289.231(m) or (o) of this title, as applicable.

(w) Radioactive markers. The licensee may use radioactive markers in wells only if the individual markers contain quantities of radioactive material not exceeding the quantities specified in §289.251(m)(2) of this title. The use of markers is subject only to the provisions of this subsection and subsection (j) of this section.

(x) Uranium sinker bars. The licensee may use a depleted uranium sinker bar in well logging service operations only if it is legibly impressed with the wording "DANGER (or CAUTION), RADIOACTIVE-DEPLETED URANIUM, NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY) IF FOUND."

(y) Energy compensation source.

(1) The licensee may use an energy compensation source that is contained within a logging tool or other tool components.

(2) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of subsections (i), (j), and (k) of this section.

(3) For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of subsections (d), (i), (j), (k), (bb)(4) and (cc) of this section.

(z) Tritium neutron generator target source.

(1) Use of a tritium neutron generator target source, containing quantities not exceeding 30 curies (Ci) (1,110 MBq) and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this section, except subsections (d), (l), and (cc) of this section.

(2) Use of a tritium neutron generator target source, containing quantities exceeding 30 Ci (1,110 MBq) or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this section, except subsection (l) of this section.

(aa) Radiation surveys.

(1) Radiation surveys (and calculations for neutron sources) shall be made and recorded for each area where radioactive materials are stored.

(2) Radiation surveys (and calculations for neutron sources) of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials shall be made and recorded. Such surveys (and calculations for neutron sources) shall include all sources of radiation transported in the vehicle.

(3) If the sealed source assembly is removed from the logging tool before departing the job site, a survey of the tool to verify that the logging tool is free of contamination shall be made and recorded.

(4) If the encapsulation of the sealed source has been damaged by an operation or is likely to have been damaged by an operation, the licensee shall immediately conduct a radiation survey and make a record of that survey, including a contamination survey, during and after the operation.

(5) Radiation surveys shall be made and recorded at the job site and/or well head for each tracer operation except for those utilizing hydrogen-3, carbon-14, sulfur-35, or krypton-85. These surveys shall include measurements of radiation levels before and after the operation.

(6) Records required in accordance with paragraphs (1)-(5) of this subsection shall also include the dates, the identification of individual(s) making the survey, the unique identification of survey instrument(s) used, radiation measurements in milliroentgen per hour (mR/hr), calculations in millirem per hour (mrem/hr) (microsievert per hour (μSv/hr)), and an exact description of the location of the survey. Each licensee or registrant shall make and maintain records of these surveys in accordance with subsection (dd)(5) of this section.

(bb) Records/documents for inspection by the agency.

(1) Each licensee or registrant shall maintain the records/documents specified in subsection (dd)(5) of this section for inspection by the agency.

(2) Each licensee or registrant maintaining additional authorized use/storage locations from which well logging service operations are conducted shall have copies of the records/documents specified in subsection (dd)(5)(B) - (E) and (G) - (O) of this section that are specific to the site available at each site for inspection by the agency.

(3) Records/documents required in accordance with paragraph (2) of this subsection shall be maintained in accordance with subsection (dd)(5) of this section.

(4) Each licensee or registrant conducting well logging service operations at a temporary job site shall have copies of the records/documents specified in subsection (dd)(5)(B), (C), (I), (K), (L), and (N) of this section available at that site for inspection by the agency.

(5) Records/documents required by paragraph (4) of this subsection shall be maintained at the temporary job site for the period of operation at that site for inspection by the agency.

(cc) Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

(1) Notification of incidents and sources lost in other than downhole well logging operations shall be made in accordance with appropriate provisions of §289.202 of this title, or §289.231 of this title, as applicable.

(2) Whenever a sealed source or a device containing radioactive material has been ruptured or is likely to have been ruptured, the licensee shall notify the agency immediately by telephone and submit written notification within 30 days. The written notification shall designate the following:

(A) the well or other location;

(B) a description of the magnitude and extent of the escape of radioactive material;

(C) an assessment of the consequences of the rupture; and

(D) an explanation of the efforts planned or being taken to mitigate these consequences.

(3) Whenever a sealed source is separated from the logging tool and is lost downhole, the licensee shall notify the agency immediately by telephone prior to beginning source recovery operations.

(4) Whenever a sealed source or device containing radioactive material is lost downhole, the licensee shall do the following:

(A) consult with the well operator, well owner, drilling contractor, or land owner regarding methods to retrieve the source or device that may reduce the likelihood that the source or device will be damaged or ruptured during the logging tool recovery (fishing) operations;

(B) monitor with a radiation survey instrument (or logging tool adjusted to detect gamma emissions from source(s) lost downhole), at the surface for the presence of radioactive contamination during logging tool recovery (fishing) operations; and

(C) notify the agency immediately by telephone and submit written notification within 30 days if radioactive contamination is detected at the surface or if the source appears to be damaged.

(5) When efforts to recover the radioactive source are not successful, the licensee shall do the following:

(A) notify the agency by telephone of the circumstances that resulted in the inability to retrieve the source and obtain agency approval to implement abandonment procedures, or that the licensee implemented abandonment before receiving agency approval because the licensee believed there was an immediate threat to public health and safety; and

(B) advise the well operator of the RRC requirements regarding abandonment and an appropriate method of abandonment, that shall include the following:

(i) the immobilization and sealing in place of the radioactive source with a cement plug;

(ii) a means to prevent inadvertent intrusion on the source, such as the setting of a whipstock or other deflection device, unless the source is not accessible to any subsequent drilling operations; and

(iii) the mounting of a permanent identification plaque, containing information required by paragraph (6) of this subsection, at the surface of the well;

(C) notify the agency by telephone giving the circumstances of the loss; and

(D) file a written report with the agency within 30 days of the abandonment, providing the following information:

(i) date of occurrence;

(ii) a description of the radioactive source involved, including radionuclide, activity, chemical and physical form, and serial number;

(iii) surface location and identification of well;

(iv) results of efforts to immobilize and seal the source in place;

(v) depth of the radioactive source;

(vi) depth of the top of the cement plug;

(vii) depth of the well; and

(viii) information contained on the permanent identification plaque.

(6) Whenever a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque (an example of a suggested plaque is shown in subsection (dd)(3) of this section) for posting on the well or wellbore. This plaque shall meet the following requirements:

(A) be constructed of long-lasting material such as stainless steel, brass, bronze, or monel. The size of the plaque should be convenient for use on active or inactive wells; for example, a 7-inch (17 cm) square. Letter size of the word "CAUTION" should be approximately twice the letter size of the rest of the information; for example, 1/2 inch (1.27 cm) and 1/4 inch (0.63 cm) letter size, respectively; and

(B) contain the following engraved information on its face:

(i) the word "CAUTION;"

(ii) the radiation symbol (color not required);

(iii) the date of abandonment;

(iv) the name of the well operator or well owner;

(v) the well name and well identification number(s) or other designation;

(vi) radionuclide(s) and activity(ies) of the source(s);

(vii) the source depth and the plug back depth (depth to the top of the plug); and

(viii) an appropriate warning, depending on the specific circumstances of each abandonment, such as the following:

(I) "Do not drill below plug back depth;"

(II) "Do not enlarge casing;" or

(III) "Do not re-enter hole before contacting Radiation Control, Department of State Health Services."

(7) The licensee shall immediately notify the agency by telephone and confirming letter if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source. Such notice shall designate well location and describe the magnitude and extent of loss of radioactive material, consequences of such loss and efforts taken or planned to mitigate these consequences.

(8) In the event of an uncontrolled release of radioactive tracer material to the environment, the licensee shall notify the agency by telephone within 24 hours and submit written notification within 30 days.

(dd) Appendices.

(1) Subjects to be included in training courses for well logging service operations and/or tracer studies are as follows:

(A) fundamentals of radiation safety that include:

(i) characteristics of radiation;

(ii) units of radiation dose (rem) and activity;

(iii) significance of radiation dose specifying radiation protection standards and biological effects of radiation;

(iv) levels of radiation from sources of radiation;

(v) methods of controlling radiation dose specifying time, distance, and shielding;

(vi) radiation safety practices, specifying prevention of contamination and methods of decontamination; and

(vii) discussion of ingestion, inhalation pathways.

(B) radiation detection instrumentation to be used that includes:

(i) use of radiation survey instruments specifying operation, calibration, and limitations;

(ii) survey techniques; and

(iii) use of individual monitoring devices;

(C) equipment to be used that specifies;

(i) handling equipment and remote handling tools;

(ii) sources of radiation;

(iii) storage control, disposal, and transport of equipment and sources of radiation;

(iv) operation and control of equipment; and

(v) maintenance of equipment.

(D) pertinent federal and state requirements;

(E) the licensee's or registrant's written operating, safety, and emergency procedures;

(F) the licensee's or registrant's record keeping procedures; and

(G) case histories and potential consequences of accidents in well logging service operations and tracer studies.

(2) In addition to the subjects for training courses required in paragraph (1) of this subsection, individuals performing tracer studies must also complete training in the following subjects:

(A) sources of contamination;

(B) contamination detection and control;

(C) decontamination techniques and limits;

(D) survey techniques for tracer materials; and

(E) packaging requirements for transportation of radioactive materials, especially residual materials from tracer studies.

(3) The following is an example of a plaque for identifying wells containing sealed sources of radioactive material abandoned downhole:
Figure: 25 TAC §289.253(dd)(3)

(4) The licensee's or registrant's operating, safety, and emergency procedures shall include descriptions of and instructions in at least the following:

(A) the handling and use of sources of radiation in wells without surface casing for protecting fresh water aquifers, if appropriate;

(B) the handling and use of sources of radiation to be employed so that no individual is likely to be exposed to radiation doses in excess of the limits established in §289.202 of this title, or §289.231 of this title, as applicable. Every reasonable effort shall be made to keep radiation exposures and releases of radioactive material in soils and effluents to unrestricted areas as low as is reasonably achievable;

(C) methods and occasions for conducting radiation surveys;

(D) methods and occasions for locking and securing sources of radiation;

(E) personnel monitoring, including bioassays, and the use of individual monitoring devices;

(F) removal of radioactive material from storage, transportation of radioactive material to field locations and temporary job sites, including packaging of sources of radiation in the vehicles, placarding of vehicles, securing sources of radiation during transportation, and return to storage;

(G) minimizing exposure of individuals during routine use and in the event of an accident;

(H) procedures for notifying proper personnel in the event of an accident or well excursion;

(I) maintenance of records;

(J) use, inspection, and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, and injection tools;

(K) procedures to be followed in the event a sealed source is lost or lodged downhole;

(L) procedures to be used for picking up, receiving, handling, and opening packages containing radioactive material;

(M) procedures to be used for surveys of temporary job sites and equipment, and decontamination of vehicles, associated equipment, and clothing following tracer studies;

(N) storage and disposal of radioactive waste;

(O) procedures for laundering contaminated clothing, if applicable;

(P) licensee's or registrant's management structure;

(Q) posting of radiation areas and labeling radioactive material containers;

(R) procedures to be followed in the event of an uncontrolled release of radioactive tracer material to the environment; and

(S) actions to be taken if a sealed source is ruptured, including actions to prevent the spread of contamination and minimize inhalation and ingestion of radioactive material, and actions to obtain suitable radiation survey instruments as required by subsection (h) of this section.

(5) The following records/documents shall be maintained by the licensee or registrant for inspection by the agency.
Figure: 25 TAC §289.253(dd)(5) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601516
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: March 29, 2006
Proposal publication date: September 16, 2005
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Commissioner of Insurance adopts amendments to §§5.4101, 5.4201, 5.4401 and 5.4501 concerning the adoption by reference of Texas Windstorm Insurance Association (TWIA) dwelling, commercial, and mobile home policy forms, new increased cost of construction endorsements for use with the dwelling and commercial policy forms, and manual rules and rates applicable to the two new endorsements. The proposed amendments were published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6030). The amendments to §5.4101, which adopt by reference the amended dwelling policy and commercial policy forms, are adopted with changes to the proposed text of both the amendments to §5.4101 and to the policy forms. The amendments to §5.4401, which adopt by reference the amended mobile home policy form, are adopted with changes to the proposed text of both the amendments to §5.4401 and to the policy form. The amendments to §5.4201, which adopt by reference two new endorsements, Form No. TWIA-431, Extension of Coverage Increased Cost of Construction (Dwelling) and Form No. TWIA-432, Extension of Coverage Increased Cost of Construction (Commercial) are adopted with changes to the proposed text of the amendments to §5.4201 and without changes to the proposed text of the two endorsements. The amendment to §5.4201, which proposed to adopt by reference an amended endorsement Form No. TWIA-320, Extensions of Coverage, is withdrawn. The amendments to §5.4501, which adopt by reference new manual rules and rates for use with the increased cost of construction endorsements are adopted with changes to the proposed text of the amendments to §5.4501 and without changes to the proposed text of the manual rules and rates.

The adoption of the amendments to §§5.4101, 5.4201, 5.4401 and 5.4501 was proposed by the TWIA in a petition filed with the Texas Department of Insurance (Department) on December 1, 2004 (Ref. No. P-1204-22). The Commissioner held a public hearing on the proposed amendments on October 20, 2005, Docket No. 2624. The purpose of the TWIA, which was created pursuant to the Insurance Code Article 21.49, is to provide windstorm and hail insurance coverage to residents and businesses in the designated catastrophe areas along the Texas coast that are unable to obtain such coverage in the voluntary market. The availability of such coverage encourages economic development and stability in the designated areas. The amendments to the TWIA dwelling and commercial policy forms, which are adopted by reference in §5.4101, exclude coverage under the dwelling and commercial policies for any loss or damage caused by or resulting from asbestos as well as for any additional cost or expense to test for, clean up, or remove the effects of asbestos or asbestos-containing materials. The amendments are necessary in order to clarify that the coverage provided under each policy is for direct physical loss caused by windstorm or hail to covered property containing asbestos materials. The petition filed by the TWIA requested an exclusion in the coverage in the dwelling and commercial policies for asbestos that included a provision that the TWIA would not in any way respond to or assess the effects of asbestos or asbestos-containing materials. A commenter objected to this part of the exclusion because the proposed language is overly broad and could potentially exclude coverage that should be provided in the TWIA policies. In response to the comment, the proposed exclusion is changed to delete the language that provided that TWIA would not in any way respond to or assess the effects of asbestos or asbestos-containing materials. Also in response to comment, the proposed exclusion is changed to clarify that TWIA does provide coverage for direct physical loss caused by windstorm or hail to covered property containing asbestos materials. This change is necessary to clarify coverage because windstorm reconstruction may involve the removal of components of a building that were made of asbestos or asbestos-containing materials, therefore, it is necessary to provide coverage for direct physical loss caused by windstorm or hail to covered property containing asbestos materials. The exclusion as adopted is consistent with the proposed exclusion in that it excludes coverage for the additional cost or expense to test for, monitor, clean up, remove, contain, treat, abate or assess the effects of asbestos or asbestos-containing materials. The amendments to the dwelling and commercial policy forms also make the current mold, fungi and other microorganisms ex-

clusion in both policy forms more consistent in wording with the other exclusions contained in the policies. This is necessary for consistency in policy exclusions and for purposes of clarity; no change in coverage results from the amendment. The proposed amendment to the rain exclusion in the dwelling policy, which was also part of the proposed changes to the dwelling policy adopted by reference in §5.4101, was withdrawn by the TWIA. The petition filed by the TWIA proposed to change the rain exclusion in the dwelling policy to exclude rain damage unless direct force of wind or hail first makes an opening in the walls or roof, and the loss is caused "immediately" by rain entering a hole created by direct force of wind or hail. A commenter objected to the use of the term "immediately" because the current rain exclusion already eliminates coverage for the types of losses targeted by the expanded exclusion. The commenter also expressed concerns that the additional language would conflict with other areas of the policy, specifically coverage for mold damaged material that must be repaired or replaced due to a loss caused by windstorm or hail, including a loss that is hidden and concealed for a period of time until detectable. As a result of the comment, the TWIA withdrew the proposed amendment, and the current rain exclusion in the dwelling policy is unchanged. This exclusion provides that loss or damage caused by rain, whether driven by wind or not, is not covered unless the direct force of wind or hail makes an opening in a roof or wall and rain enters through the opening and causes the damage. The commercial policy currently has a rain exclusion similar to the one proposed by the TWIA for the dwelling policy.

The new increased cost of construction endorsements, which are adopted by reference in §5.4201, and the manual rules and rates for use with the endorsements, which are adopted by reference in §5.4501, are necessary to make available windstorm and hail coverage that is sufficient to pay for windstorm and hail losses resulting from the increased cost of construction due to an ordinance or law or the windstorm building code. Another proposed amendment to §5.4201, which would have amended Form No. TWIA 320, Extensions of Coverage, to provide additional coverage to rain-damaged property, was withdrawn by the TWIA. The petition filed by the TWIA proposed the amendment which provided that in consideration of additional premium, coverage would be provided for sudden and accidental loss to the dwelling and personal property caused immediately by wind-driven rain during a windstorm whether or not an opening was first made in the dwelling by the direct force of wind or hail. A commenter opposed the amendment because of the addition of the "sudden and accidental" language to the cause of loss and the provision that the loss must occur "immediately" during a windstorm. The commenter opined that because the policy is limited to providing coverage for windstorm losses, the additional language is redundant and would conflict with other provisions of the policy. As a result of the comment, the TWIA withdrew the proposed amendment to Form No. TWIA-320, Extensions of Coverage.

The amendments to §5.4401, which adopt by reference a revised Texas Special Mobile Home Windstorm and Hail Insurance Policy (Mobile Home Policy) add an asbestos exclusion and non-substantively amend the mold, fungi, or other microorganism exclusion currently in the policy. The asbestos exclusion, which is the same as the asbestos exclusion adopted for inclusion in the commercial and dwelling policies, excludes coverage for any loss or damage caused by or resulting from asbestos as well as any additional cost or expense to test for, clean up, or remove the effects of asbestos or asbestos-containing materials. This amendment to the policy form is necessary to clarify that the coverage provided under the mobile home policy is for direct physical loss caused by windstorm or hail to covered property containing asbestos materials. The petition filed by the TWIA requested an exclusion in the mobile home policy for asbestos that included the provision that the TWIA would not in any way respond to or assess the effects of asbestos or asbestos-containing materials. A commenter objected to this part of the exclusion because the proposed language is overly broad and could potentially exclude coverage that should be provided in the TWIA policies. In response to the comment, the proposed exclusion is changed to delete the language that provided that TWIA would not in any way respond to or assess the effects of asbestos or asbestos-containing materials. Also in response to comment, the proposed exclusion is changed to clarify that TWIA does provide coverage for direct physical loss caused by windstorm or hail to covered property containing asbestos materials. This change is necessary because covered windstorm reconstruction may involve the removal of components of a building that were made of asbestos or asbestos-containing materials, and therefore, it is necessary to continue coverage for direct physical loss caused by windstorm or hail to covered property containing asbestos materials. The exclusion as adopted is consistent with the proposed exclusion in that it excludes coverage for the additional cost or expense to test for, monitor, clean up, remove, contain, treat, abate or assess the effects of asbestos or asbestos-containing materials. The amendment to the mold, fungi, or other microorganism exclusion in the mobile home policy, which is the same as the amendment adopted for inclusion in the commercial and dwelling policies, adds introductory language to the exclusion that makes the wording more consistent with the other exclusions contained in the mobile home policy. This is necessary for consistency in policy exclusions and for purposes of clarity; no change in coverage results from the amendment.

Lastly, amendments to the sections are needed to update titles and addresses; incorporate consistent language in the rules: indicate a change in the effective dates of the policy forms, endorsements, and manual rules and rates for use with the endorsements; and eliminate obsolete references. The proposed effective date for the amended dwelling, commercial, and mobile home policies; the two new endorsements, Form No. TWIA-431 and Form No. TWIA-432; and the manual rules and rates applicable to the new endorsements is changed from January 1, 2006 to July 15, 2006. This change is in response to a comment by the TWIA and is necessary to enable the TWIA to send out renewals 90 days in advance with the correct rates and premiums. None of the changes that have been made to the proposal as published introduce new subject matter or affect additional persons other than those subject to the proposal as originally published.

The amendment to §5.4101 adopts by reference an amended TWIA dwelling policy form and an amended TWIA commercial policy form. The amendments to the dwelling policy add an Exclusion No. 10 entitled "Asbestos" and add non-substantive clarifying language to Exclusion No. 9, entitled "Mold, Fungi, or Other Microorganisms." The amendments to the commercial policy add an Exclusion No. 11 entitled "Asbestos" and add non-substantive clarifying language to Exclusion No. 10 entitled "Mold, Fungi, or Other Microorganisms." The language in the exclusions is essentially the same for both policies. The asbestos exclusion adopted in both policy forms specifies that coverage is not provided for loss or damage caused by or resulting from asbestos, including additional cost or expense to test for, monitor,

clean up, remove, contain, treat, abate or assess the effects of asbestos or asbestos-containing materials. The exclusion, however, clarifies that coverage is provided for direct physical loss caused by windstorm or hail to covered property containing asbestos materials. The amendment to the mold, fungi, or other microorganisms exclusion adds introductory language to the exclusion to make the exclusion more consistent with the other exclusions contained in the policies. The introductory language does not result in any substantive change in policy provisions and reads as follows: "We do not cover loss or damage caused by or resulting from fungi or mold, and other microorganisms, except as provided [below]." The substantive provisions of the policy then follow.

The amendments to §5.4201 adopt by reference two new increased cost of construction endorsements and repeal the current increased cost of construction endorsement. The new endorsements, Form No. TWIA-431, Extension of Coverage - Increased Cost of Construction, for use on dwelling policies and Form No. TWIA-432, Extension of Coverage - Increased Cost of Construction, for use on commercial policies, provide coverage for increased cost of construction to rebuild to current building laws or ordinances, including the increased cost of construction to rebuild to the applicable windstorm building code. The new endorsements also provide coverage for the demolition or repair of an undamaged portion of a covered structure if necessary to meet the requirements of the law or ordinance. Form No. TWIA-430, Extension of Coverage - Increased Cost in Construction is repealed because it is replaced by the two new endorsements.

The amendments to §5.4401 adopt by reference an amended Texas Special Mobile Home Windstorm and Hail Insurance Policy (Mobile Home Policy). The amendments to the mobile home policy add a new exclusion entitled "Asbestos" and non-substantively amend the exclusion for mold, fungi, or other microorganisms. The language in the exclusions is essentially the same as the exclusions in the dwelling and commercial policies. The asbestos exclusion specifies that coverage is not provided for loss or damage caused by or resulting from asbestos or the cost to test for, monitor, clean up, remove, contain, treat, abate or in any way respond to or assess the effects of asbestos or asbestos-containing materials. However, coverage continues to be provided for direct physical loss caused by windstorm or hail to covered property containing asbestos materials. The amendment to the mold, fungi, or other microorganisms exclusion adds introductory language to the exclusion to make the exclusion more consistent in wording with the other exclusions contained in the policies. The introductory language does not result in any substantive change in policy provisions.

The amendments to §5.4501 adopt by reference the manual rules for the attachment of the new increased cost of construction endorsements and the corresponding rates for each of the new endorsements based on the limit of liability for each building item selected by the insured. The limits of liability available for both policies is 5%, 10%, 15%, or 25% of Coverage A limit of liability. The rates for both policies are 7.0% of structure premium, if 5% of Coverage A limit of liability is selected; 11.6% of structure premium, if 10% of Coverage A limit of liability is selected; 14.0% of structure premium, if 15% of Coverage A limit of liability is selected; and 15.7% of structure premium, if 25% of Coverage A limit of liability is selected.

Comment: A commenter opposes the proposed amendment to the rain exclusion in the dwelling policy, which would exclude rain damage unless direct force of wind or hail first made an opening in the walls or roof of the described building, and loss is caused "immediately" by rain entering through such openings. The commenter asserts that the additional term "immediately" is unnecessary because the exclusion already eliminates coverage for the types of losses targeted by the additional language. The commenter also expresses concerns that the additional language would conflict with other areas of the policy, specifically coverage for mold damaged material that must be repaired or replaced due to a loss caused by windstorm or hail, including a loss that is hidden and concealed for a period of time until detectable.

Agency Response: The Department staff drafted alternative language to address the commenter's concerns; however, as a result of the comment, the TWIA withdrew the proposed amendment to the dwelling policy.

Comment: A commenter opposes the proposed amendment to Form No. TWIA-320, Extensions of Coverage, which would have added "sudden and accidental" language to the cause of loss and specified that the loss must occur "immediately" by wind-driven rain "during a windstorm." The commenter opines that because the policy is limited to providing coverage for windstorm losses, the additional language is redundant and would conflict with other provisions of the policy.

Agency Response: Based on the comment, the TWIA withdrew the proposed amendments to the wind-driven rain coverage provided in Form No. TWIA-320, Extensions of Coverage.

Comment: A commenter opposes language in the proposed asbestos exclusion in the commercial policy, the dwelling policy, and the mobile home policy, because it is overly broad, and could potentially exclude coverage that should be provided in the TWIA policies. The specific language in question reads: "[TWIA would not] in any way respond to or assess the effects of asbestos or asbestos-containing material."

Agency Response: The Department agrees. The Department staff worked with the TWIA and the commenter to resolve this concern. TWIA agreed to delete the phrase "in any way respond to or assess the effects of asbestos or asbestos-containing materials" from the proposed amendment to the commercial policy, the dwelling policy and the mobile home policy. In addition, the proposed exclusion is changed to specify that the TWIA does provide coverage for direct physical loss caused by windstorm or hail to covered property containing asbestos materials. The exclusion as adopted is consistent with the proposed exclusion in that it excludes coverage for the additional cost or expense to test for, monitor, clean up, remove, contain, treat, abate or assess the effects of asbestos or asbestos-containing materials.

Comment: The Texas Windstorm Insurance Association requests that the effective date of the new policy forms and endorsements be changed from May 1, 2006 to July 15, 2006 in order for the Association to send out renewals 90 days in advance with the correct rates and premiums.

Agency Response: The Department agrees, and the effective date for the dwelling, commercial, and mobile home policies, the endorsements Form No. TWIA-431 and Form No. TWIA-432, and the manual rules and corresponding rates for the new endorsements is changed to July 15, 2006.

For with changes: Office of Public Insurance Counsel and Texas Windstorm Insurance Association.

DIVISION 3. POLICY FORMS

28 TAC §5.4101

The amendments are adopted pursuant to Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49 §8, the Commissioner is authorized to promulgate policy forms and endorsements for use by the TWIA in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state, and further, the Commissioner is authorized to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the TWIA. Article 21.49 §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4101. TWIA Dwelling and Commercial Policy Forms.

The Texas Department of Insurance adopts by reference the Texas Windstorm Insurance Association Dwelling Policy and the Texas Windstorm Insurance Association Commercial Policy as amended effective July 15, 2006. Specimen copies of these policy forms are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601422
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 15, 2006
Proposal publication date: September 23, 2005
For further information, please call: (512) 463-6327

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DIVISION 4. ENDORSEMENTS

28 TAC §5.4201

The amendments are adopted pursuant to Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49 §8, the Commissioner is authorized to promulgate policy forms and endorsements for use by the TWIA in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state, and further, the Commissioner is authorized to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the TWIA. Article 21.49 §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4201. Endorsements for Use with TWIA Policy Forms.

The Texas Department of Insurance adopts by reference endorsements for use with the Texas Windstorm Insurance Association (TWIA) Policy Forms. Specimen copies of these endorsements are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They are also available from the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The endorsement forms are more specifically identified as follows.

(1) Endorsements for use with the TWIA Dwelling Policy and the TWIA Commercial Policy. Form No. TWIA-1, Blank Schedule Form, effective June 15, 1999.

(2) Endorsements for use with the TWIA Dwelling Policy and the TWIA Commercial Policy and the Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) Form No. TWIA-12, Assignment of Interest or Change in Mortgagee or Trustee, effective June 15, 1999.

(B) Form No. TWIA-23, Cancellation Report, effective June 15, 1999.

(C) Form No. TWIA-77, General Change Endorsement, effective June 15, 1999.

(D) Form No. TWIA-112, Loss Payable Clause, effective June 15, 1999.

(E) Form No. TWIA-113, Lost Policy Voucher, effective June 15, 1999.

(F) Form No. TWIA-130, Mortgage Clause (Without Contribution), effective June 15, 1999.

(G) Form No. TWIA-151A, Premium Assignment Clause, effective June 15, 1999.

(H) Form No. TWIA-175, Sale Contract Clause, effective June 15, 1999.

(I) Form No. TWIA-195, Sworn Statement in Proof of Loss, effective June 15, 1999.

(3) Endorsements for use with the TWIA Commercial Policy.

(A) Form No. TWIA-18, Builders Risk--Stated Value Form, effective June 15, 1999.

(B) Form No. TWIA-21, Builders Risk--Actual Completed Value Form, effective June 15, 1999.

(C) Form No. TWIA-26, Church Form, effective June 15, 1999.

(D) Form No. TWIA-65, Large Deductible Endorsement, effective June 15, 1999.

(E) Form No. TWIA-115, Lumber Form--Specific--Retail Yard, effective June 15, 1999.

(F) Form No. TWIA-164, Replacement Cost Endorsement, effective June 15, 1999.

(G) Form No. TWIA-176, School Form, effective June 15, 1999.

(H) Form No. TWIA-280, Condominium Property Form--Additional Policy Provisions, effective June 15, 1999.

(I) Form No. TWIA-282, Condominium Property Form--Additional Property Provisions, amended June 15, 1999.

(J) Form No. TWIA-17, Business Income Coverage, effective May 1, 2001.

(K) Form No. TWIA-432, Extension of Coverage--Increased Cost of Construction (Commercial) effective July 15, 2006.

(4) Endorsements for use with the TWIA Dwelling Policy.

(A) Form No. TWIA-310, Extensions of Coverage, amended June 15, 1999.

(B) Form No. TWIA-315, Extensions of Coverage, amended June 15, 1999.

(C) Form No. TWIA-320, Extensions of Coverage, amended June 15, 1999.

(D) Form No. TWIA-325, Extensions of Coverage, amended June 15, 1999.

(E) Form No. TWIA-326, Extensions of Coverage, amended June 15, 1999.

(F) Form No. TWIA-328, Extensions of Coverage, amended June 15, 1999.

(G) Form No. TWIA-410, Conversion to Farm and Ranch Dwelling Policy, effective June 15, 1999.

(H) Form No. TWIA-431, Extension of Coverage--Increased Cost of Construction (Dwelling), effective July 15, 2006.

(5) Endorsements for use with the TWIA Dwelling Policy.

(A) Form No. TWIA-330, Extensions of Coverage, amended June 15, 1999.

(B) Form No. TWIA-335, Extensions of Coverage, amended June 15, 1999.

(C) Form No. TWIA-340, Extensions of Coverage, amended June 15, 1999.

(D) Form No. TWIA-345, Extensions of Coverage, amended June 15, 1999.

(E) Form No. TWIA-350, Extensions of Coverage, amended June 15, 1999.

(F) Form No. TWIA-365, Replacement Cost Endorsement--Personal Property, amended June 15, 1999.

(G) Form No. TWIA-400, Actual Cash Value--Roofs (One or Two Family Dwellings), effective June 15, 1999.

(H) Form No. TWIA-420, Exclusion of Cosmetic Damage to Roof Coverings Caused by Hail, effective June 15, 1999.

(6) Endorsements for use with the Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) Form No. TWIA-29, Mandatory Endorsement, amended June 15, 1999.

(B) Form No. TWIA-570, Mobile Home Percentage Deductible Clause (Coastal Area), amended June 15, 1999.

(C) Form No. TWIA-575, Mobile Home Percentage Deductible Clause (Beach Area), amended June 15, 1999.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601423
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 15, 2006
Proposal publication date: September 23, 2005
For further information, please call: (512) 463-6327

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DIVISION 5. TEXAS SPECIAL MOBILE HOME WINDSTORM AND HAIL INSURANCE POLICY

28 TAC §5.4401

The amendments are adopted pursuant to Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49 §8, the Commissioner is authorized to promulgate policy forms and endorsements for use by the TWIA in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state, and further, the Commissioner is authorized to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the TWIA. Article 21.49 §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4401. Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage.

The Texas Department of Insurance adopts by reference the Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage, as amended effective July 15, 2006. Specimen copies of this policy are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601424
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 15, 2006
Proposal publication date: September 23, 2005
For further information, please call: (512) 463-6327

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DIVISION 6. MANUAL

28 TAC §5.4501

The amendments are adopted pursuant to Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49 §8, the Commissioner is authorized to promulgate policy forms and endorsements for use by the TWIA in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state, and further, the Commissioner is authorized to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the TWIA. Article 21.49 §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.4501. Rules for the Texas Windstorm Insurance Association.

The Texas Department of Insurance adopts by reference a rules manual for the Texas Windstorm Insurance Association as amended effective July 15, 2006. A specimen copy of the rules manuals is available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 15, 2006
Proposal publication date: September 23, 2005
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§39.403, 39.411, 39.419, and 39.420, the repeal of §39.404, and new §39.404. Sections 39.403, 39.404, 39.411, 39.419, and 39.420 are adopted *with* changes to the proposed text as published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8401). The repeal of §39.404 is adopted *without changes* to the proposal and will not be republished.

Certain provisions of the rules will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP), specifically, §39.403(b)(8) - (10) and new (f), the repeal of §39.404, and new §39.404. The commission also will withdraw §§39.411, 39.419, and 39.420 as submitted to EPA on July 31, 2002, and submit §§39.411(a), (b)(1) - (6), (8) - (10), (c)(1) - (6), and (d); 39.419(a), (b), (d), and (e); and 39.420(a), (b), and (c)(3) and (4) as a revision to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under the adopted rules, eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings.

The purpose of the adopted revisions to Chapter 39 is to implement the requirements of HB 2201 with respect to the public notice requirements of permit applications required to authorize a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, public notice requirements for these applications need to be modified to reflect that the applications are not subject to contested case hearings. The adopted revisions include a reference to the new 30 TAC Chapter 91, that establishes the streamlined process for applications required to authorize a component of the FutureGen process.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 50, Action on Applications and Other Authorizations, 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and 30 TAC Chapter 331, Underground Injection Control.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these rules to be consistent with Texas Register requirements and agency guidelines and to update rule citations.

§39.403. Applicability.

The commission adopts an amendment to §39.403 by adding a new subsection (f) stating that applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in the concurrently adopted §91.30, Defini-

tions, are subject to the public notice requirements of concurrently adopted new Chapter 91, in addition to the requirements of this chapter, unless otherwise specified in Chapter 91. For most types of applications, the notice requirements in new Chapter 91 will use existing notice requirements for the type of application sought, except to modify the text of the notice to indicate that the application is for authorization of a component of the FutureGen project and is not subject to a contested case hearing. In response to comments, the commission has revised §39.403(f) to establish a sunset date of January 1, 2018. Applications or other requests for authorization submitted after January 1, 2018, would not be eligible to use the streamlined public participation provisions.

§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities.

The commission adopts the repeal of §39.404 and replaces it with new §39.404.

§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities.

The commission adopts new §39.404, which includes applicability requirements for certain designated projects, specifically applications submitted under Chapter 116, concurrently adopted new Subchapter L, Permits for Specific Designated Facilities. In response to comments, the commission has revised §39.404(b)(2) to establish a sunset date of January 1, 2018. Applications or other requests for authorization submitted after January 1, 2018, would not be eligible to use the streamlined public participation provisions.

§39.411. Text of Public Notice.

The commission adopts an amendment to §39.411 to specify in subsection (b)(10)(B) that notice for applications submitted under §39.404(b) only require a statement that any person is entitled to request a notice and comment hearing from the commission. In response to comments, the commission has revised §39.411(b)(10)(B) to establish a sunset date of January 1, 2018. Applications or other requests for authorization of FutureGen projects submitted after January 1, 2018, would not be eligible to use the streamlined public participation provisions.

§39.419. Notice of Application and Preliminary Decision.

The commission adopts an amendment to §39.419 by adding a new paragraph (4) to subsection (e) specifying that applications to construct, authorize, or operate a component of the FutureGen project as defined in concurrently adopted §91.30, Definitions, shall be subject to the public notice and participation requirements stated in Chapter 116, concurrently adopted new Subchapter L. In response to comments, the commission has revised §39.419(e)(4) to establish a sunset date of January 1, 2018. Applications or other requests for authorization submitted after January 1, 2018, would not be eligible to use the streamlined public participation provisions of Chapter 116, Subchapter L, Permits for Specific Designated Facilities.

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

The commission proposed an amendment to §39.420 by adding a new subsection (f), stating that the chief clerk shall not be required to transmit the item listed in §39.420(a)(4), concerning instructions for requesting a contested case hearing, for permit applications under Chapter 116, concurrently adopted new Subchapter L. In response to public comment, the commission has changed the proposed language to state that the chief clerk will not transmit the item listed in §39.420(a)(4).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are intended to establish notice requirements for authorizing certain types of projects required for the FutureGen project. The adopted rules are only procedural rules establishing public notice requirements to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The adopted rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements. First, the adopted rules are consistent with and do not exceed the standards set by federal law. Second, the adopted rules do not exceed an express requirement of state law, instead these rules implement HB 2201. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of Texas Health and Safety Code (THSC), §382,0565, as added by HB 2201, which directs the commission to, by rule, implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; Texas Water Code (TWC), §5.558, as amended by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the

injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because the adopted rules do not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The adopted rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The adopted rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, the adopted rules do not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program, and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted revisions include procedural mechanisms to authorize new sources of air contaminants; however, the revisions do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

A FutureGen project may or may not be subject to the Federal Operating Permits Program depending on the quantity and type of its emissions and location. If subject, facilities will be required to meet all requirements of the Federal Operating Permits Program.

PUBLIC COMMENT

A public hearing for this rulemaking was held on December 20, 2005, in Austin, and the comment period closed on December 27, 2005. The commission received comments from the FutureGen Texas Advisory Board (FGTAB), Environmental Defense (ED), the Center for Energy and Economic Development (CEED), the Sierra Club Houston Regional Group (HSC), and the Clean Coal Technology Foundation of Texas (CCTFT).

RESPONSE TO COMMENTS

CEED commented that there was no need for a sunset provision in the rules, because the FutureGen initiative represented a one-of-a-kind project. HSC and ED commented that an expiration date should be included in the rules. HSC suggested an expiration date of 2010, and ED suggested an expiration date of January 1, 2015.

The commission is changing the rule in response to these comments and is establishing a sunset date of January 1, 2018. Applications or other requests for authorization submitted after this date would not be excluded from contested case hearings. This change will ensure that the streamlined permitting processes of Chapters 91 and 116 are only used for their intended purpose of providing an incentive for the FutureGen project construction.

HSC supported the provision of §39.404(b) allowing a person to request a notice and comment hearing, but it opposed the proposed rules that would allow a permit to be issued for a FutureGen project without providing the public with an opportunity to request and receive a contested case hearing.

The commission is not changing the rule in response to this comment. The adopted rules implement HB 2201, passed by the 79th Texas Legislature. Sections 3 and 7 of HB 2201 amend portions of the THSC and TWC to provide that permit applications for facilities that are a component of the FutureGen project are not subject to contested case hearings. The commission is required by HB 2201 to adopt rules to implement the statutory changes specified by HB 2201. Under the adopted rules, the public retains the ability to participate in the permitting process by submitting written comments during the comment period, and by requesting a notice and comment hearing on the permit.

FGTAB and CCTFT suggested that proposed §39.420(f) be rephrased. The proposed rule states that "the chief clerk shall not be required to transmit the item listed in subsection (a)(4) of this section." FGTAB suggested that this phrase be altered to read "the chief clerk will not transmit the item listed in subsection (a)(4) of this section."

The commission agrees with the suggested change and has revised §39.420(f) accordingly.

30 TAC §§39.403, 39.404, 39.411, 39.419, 39.420

STATUTORY AUTHORITY

The amendments and new section are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary

to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments and new section are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; and §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The adopted amendments and new section implement TWC, §5.558(c) and THSC, §382.0565(d).

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Air Quality Applications; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - E of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications; Public Notice of Air Quality Applications; and Public Notice of Other Specific Applications). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits). The effective date of the amendment of existing §39.403, specifically with respect to subsection (c)(9) and (10), is June 3, 2002. Applications for modifications filed before this amended section becomes effective will be subject to this section as it existed prior to June 3, 2002.

(1) Explanation of applicability. Subsection (b) of this section lists all the types of applications to which Subchapters H - M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsections (d) and (e) of this section specify that only certain sections apply to applications for radioactive materials licenses or voluntary emission reduction permits.

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits, concrete batch plant air quality exemptions from permitting or permits by rule, and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

(4) applications for production area authorizations under Chapter 331 of this title (relating to Underground Injection Control);

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (e) of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing);

(8) applications for air quality permits under THSC, §382.0518 and §382.055. In addition, applications for permit amendments under §116.116(b) of this title (relating to Changes to Facilities), initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), amendments to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) when an action involves:

(A) construction of any new facility as defined in §116.10 of this title (relating to General Definitions);

(B) modification of an existing facility as defined in §116.10 of this title which result in an increase in allowable emissions of any air contaminant emitted equal to or greater than the emission quantities defined in §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule) and of sources defined in §106.4(a)(2) and (3) of this title; or

(C) other changes when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process; or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(9) applications subject to the requirements of Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(10) concrete batch plants registered under Chapter 106 of this title (relating to Permits by Rule) unless the facility is to be temporarily located in or contiguous to the right-of-way of a public works project;

(11) applications for voluntary emission reduction permits under THSC, §382.0519;

(12) applications for permits for electric generating facilities under Texas Utilities Code, §39.264;

(13) applications for multiple plant permits (MPPs) under THSC, §382.05194; and

(14) Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.

(c) Notwithstanding subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Subchapter B of that chapter;

(2) applications for registrations and notifications under Chapter 312 of this title;

(3) applications under Chapter 332 of this title (relating to Composting);

(4) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(5) applications under Chapter 116, Subchapter F of this title (relating to Standard Permits);

(6) applications under Chapter 106 of this title, except for concrete batch plants specified in subsection (b)(10) of this section;

(7) applications under §39.15 of this title (relating to Public Notice Not Required for Certain Types of Applications) without regard to the date of administrative completeness;

(8) applications for minor amendments under §305.62(c)(2) of this title (relating to Amendment). Notice for minor amendments shall comply with the requirements of §39.17 of this title (relating to Notice of Minor Amendment) without regard to the date of administrative completeness;

(9) applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;

(10) applications for modifications of municipal solid waste permits and registrations under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Notice for modifications shall comply with the requirements of §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration), without regard to the date of administrative completeness;

(11) applications for Class 2 modifications of industrial or hazardous waste permits under §305.69(c) of this title. Notice for Class 2 modifications shall comply with the requirements of §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 and §305.69(c) of this title;

(12) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee);

(13) applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title;

(14) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); or

(15) applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-Injection Units Registration).

(d) Applications for initial issuance of voluntary emission reduction permits under THSC, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply. For MPP applications filed before September 1, 2001, the initial issuance, amendment, or revocation of MPPs under THSC, §382.05194 is subject to the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits, except as otherwise provided in §116.1040 of this title (relating to Multiple Plant Permit Public Notice and Public Participation).

(e) Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title; §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice).

(f) Applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities.

(a) Initial applications for air quality permits for grandfathered facilities.

(1) With the exception of §39.403(a)(1) of this title (relating to Applicability), Subchapters H - M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste

Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Air Quality Applications; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses) also apply to:

(A) applications for permits for electric generating facilities under Texas Health and Safety Code, §382.05185(c) and (d);

(B) applications for existing facilities permits under Texas Health and Safety Code, §382.05183; and

(C) applications for pipeline facility permits under Texas Health and Safety Code, §382.05186.

(2) Applications for initial issuance of permits under Texas Health and Safety Code, §§382.05183, 382.05185(c) and (d), and 382.05186 are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.418, 39.420, and 39.601 - 39.606 of this title (relating to Purpose; General Notice Provisions; Mailing Lists; Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing; Text of Public Notice; Notice of Receipt of Application and Intent to Obtain Permit; Transmittal of the Executive Director's Response to Comments and Decision; Applicability; Mailed Notice; Newspaper Notice; Sign-Posting; Notice to Affected Agencies; and Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply.

(b) Applications for permits for specific designated facilities.

(1) With the exception of §39.403(a)(1) of this title, Subchapters H - M of this chapter also apply to applications for permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

(2) Applications for permits under Chapter 116, Subchapter L of this title submitted on or before January 1, 2018, are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.418, 39.420, and 39.601 - 39.605 of this title, except that any reference to contested case hearings shall not apply.

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Mailed Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commissions's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of air applications:

(A) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(B) if notice is for applications described in §39.403(b)(11) or (12) of this title (relating to Applicability) or for applications submitted on or before January 1, 2018, under §39.404(b) of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities), a statement that any person is entitled to request a notice and comment hearing from the commission. If notice is for any other air application, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(i) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;

(ii) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(iii) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity; and

(iv) that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted;

(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a contested case hearing; and

(D) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality"; and

(11) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(12) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(13) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(14) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (12) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (12) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the chief clerk, except for air applications under subsection (e)(1) of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.405(h) of this title (relating to General Notice Provisions), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications the following apply.

(1) The applicant is not required to publish Notice of Application and Preliminary Decision, if:

(A) no hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit;

(B) a hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued;

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations; or

(D) the application is for initial issuance of a permit described in §39.403(b)(11) or (12) of this title (related to Applicability) or §39.404 of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities);

(2) If notice under this section is required, the agency shall mail notice according to §39.602 of this title (relating to Mailed Notice).

(3) Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Applications) and, as applicable, under §39.405(h) of this title for permits that are not exempt under paragraph (1)(A) - (D) of this subsection or are for the following federal preconstruction approvals:

(A) applications under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review);

(B) applications under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review); and

(C) applications under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(4) If the applicant is seeking authorization by permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), any application submitted on or before January 1, 2018, shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

(a) When required by and subject to §55.156 of this title (relating to Public Comment Processing), after the close of the comment period, the chief clerk shall transmit to the people listed in subsection (b) of this section the following information:

(1) the executive director's decision;

(2) the executive director's response to public comments;

(3) instructions for requesting that the commission reconsider the executive director's decision; and

(4) instructions for requesting a contested case hearing.

(b) The following persons shall be sent the information listed in subsection (a) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) Office of Public Assistance.

(c) For air applications which meet the following conditions, items listed in subsection (a)(3) and (4) of this section are not required to be included in the transmittals:

(1) applications for initial issuance of permits under Texas Health and Safety Code, §§382.05183, 382.05185(c) and (d), 382.05186, and 382.0519;

(2) applications for initial issuance of electric generating facility permits under Texas Utilities Code, §39.264;

(3) applications for which no timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain a Permit;

(4) applications for which a timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued; or

(5) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(d) For applications for which all timely comments and requests have been withdrawn before the filing of the executive director's response to comments, the chief clerk shall transmit only the items listed in subsection (a)(1) and (2) of this section and the executive director may act on the application under §50.133 of this title (relating to Executive Director Action on Application or WQMP Update).

(e) For post-closure order applications under Subchapter N of this chapter (relating to Public Notice of Post-Closure Orders), the chief clerk shall transmit only items listed in subsection (a)(1) and (2) of this section to the people listed in subsection (b)(1) - (3), (5), and (6) of this section.

(f) For applications for permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk will not transmit the item listed in subsection (a)(4) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601518

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Effective date: March 29, 2006
Proposal publication date: December 16, 2005
For further information, please call: (512) 239-5017

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30 TAC §39.404

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; and §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The adopted repeal implements TWC, §5.558(c) and THSC, §382.0565(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
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Proposal publication date: December 16, 2005
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CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

SUBCHAPTER F. ACTION BY THE COMMISSION

30 TAC §50.113

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §50.113 *with change* to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7810).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under the adopted rule, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings.

The purpose of the adopted amendment to Chapter 50 is to implement the requirements of HB 2201 with respect to a streamlined permitting process for applications required to authorize a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, the amendment to §50.113 allows the commission to act on an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project without holding a contested case hearing.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and 30 TAC Chapter 331, Underground Injection Control.

SECTION DISCUSSION

§50.113, Applicability and Action on Application.

The adopted amendment adds new subsection (d)(7), which states that the commission may act on an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30, Definitions, without holding a contested case hearing. Concurrently, adopted new Chapter 91 provides the streamlined permitting process for applications for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project. In response to comments, the commission has established a sunset date of January 1, 2018, for this streamlined permitting process, so that applications submitted after that date would no longer be excluded from contested case hearings.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule does not meet the definition of a "major environmental rule." Under Texas Gov-

ernment Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule is intended to establish procedural requirements for authorizing certain types of projects required for the FutureGen project without holding a contested case hearing. The adopted rule is only a procedural rule for processing applications for permits for the FutureGen project and is not specifically intended to protect the environment or to reduce risks to human health. The adopted rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225, definition of "major environmental rule."

Furthermore, the adopted rule does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rule does not meet any of these applicability requirements. First, the rule is consistent with, and does not exceed, the standards set by federal law. Second, the rule does not exceed an express requirement of state law; instead, the rule implements HB 2201. Third, the rule does not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt the rule solely under the general powers of the agency, but rather under the authority of Texas Health and Safety Code (THSC), §382.0565, as added by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; Texas Water Code (TWC), §5.558, as amended by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because the adopted rule does not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rule and performed an assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The adopted rule is intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The adopted rule is only a procedural rule establishing a system to administer the program for permitting FutureGen projects and is not specifically intended to protect the environment or to reduce risks to human health. The rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Promulgation and enforcement of the rule will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The rule also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, the adopted rule does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the rule will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted rule includes procedural mechanisms to authorize new sources of air contaminants; however, the rule does not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

A FutureGen project may or may not be subject to the federal operating permits program depending on the quantity and type of its emissions and location. If subject, facilities will be required to meet all requirements of the Federal Operating Permits Program.

PUBLIC COMMENT

A public hearing for this rulemaking was held on December 20, 2005, in Austin, and the comment period closed on December 27, 2005. The commission received comments from the

United States Environmental Protection Agency, Environmental Defense, the FutureGen Texas Advisory Board, the Center for Energy and Economic Development, and the Clean Coal Technology Foundation of Texas. These commenters addressed the FutureGen rulemaking in general, but did not specifically comment on the amendments to this chapter. The commission also received comments from the Sierra Club Houston Regional Group (HSC).

RESPONSE TO COMMENTS

HSC expressed general opposition to the proposed rules, which would allow a permit to be issued for a FutureGen project without providing the public with an opportunity to request and receive a contested case hearing.

The adopted rules implement HB 2201, passed by the 79th Texas Legislature. Sections 3 and 7 of HB 2201 amend portions of the THSC and TWC to provide that permit applications for facilities that are a component of the FutureGen project are not subject to contested case hearings. The commission is required by HB 2201 to adopt rules to implement the statutory changes specified by HB 2201. Under the adopted rules, the public retains the ability to participate in the permitting process by submitting written comments during the comment period, and/or by requesting a notice and comment hearing on the permit. The commission is not changing the rule in response to this comment.

The Center for Energy and Economic Development commented that there was no need for a sunset provision in the rules, because the FutureGen initiative represented a one-of-a-kind project. HSC commented that an expiration date, no later than 2010, should be included in the rules. Environmental Defense commented that an expiration date of January 1, 2015, would be appropriate.

The commission is changing the rule in response to these comments and is establishing a sunset date of January 1, 2018. Applications or other requests for authorization submitted after this date would not be excluded from contested case hearings. This change will ensure that the streamlined permitting processes of Chapters 91 and 116 are only used for their intended purpose of providing an incentive for the FutureGen project construction.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.0518, concerning preconstruction permits; THSC, §382.056, concerning notice of intent to obtain permit or permit review and hearing; THSC, §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The adopted amendment implements TWC, §5.558(c) and THSC, §382.0565(d).

§50.113. Applicability and Action on Application.

(a) Applicability. This subchapter applies to applications that are declared administratively complete on or after September 1, 1999. Applications that are declared administratively complete before September 1, 1999, are subject to Subchapter B of this chapter (relating to Action by the Commission).

(b) This chapter does not create a right to a contested case hearing where the opportunity for a contested case hearing does not exist under other law.

(c) After the deadline for filing a request for reconsideration or contested case hearing under §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing), the commission may act on an application without holding a contested case hearing or acting on a request for reconsideration, if:

(1) no timely request for reconsideration or hearing has been received;

(2) all timely requests for reconsideration or hearing have been withdrawn, or have been denied by the commission;

(3) a judge has remanded the application because of settlement; or

(4) for applications under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382, the commission finds that there are no issues that:

(A) involve a disputed question of fact;

(B) were raised during the public comment period; and

(C) are relevant and material to the decision on the application.

(d) Without holding a contested case hearing, the commission may act on:

(1) an application for any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted;

(2) an application for any initial issuance of an air permit for a voluntary emission reduction or electric generating facility;

(3) an application for a hazardous waste permit renewal under §305.631(a)(8) of this title (relating to Renewal);

(4) an application for a wastewater discharge permit renewal or amendment under Texas Water Code, §26.028(d), unless the commission determines that an applicant's compliance history as determined under Chapter 60 of this title (relating to Compliance History) raises issues regarding the applicant's ability to comply with a material term of its permit;

(5) an application for a Class I injection well permit used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells;

(6) an application for pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(7) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title

(relating to Definitions), if the application was submitted on or before January 1, 2018; and

(8) other types of applications where a contested case hearing request has been filed but no opportunity for hearing is provided by law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2006.

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Acting Deputy Director, Office of Legal Services
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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.201

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §55.201 *with change* to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7813).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under the adopted rule, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings.

The purpose of the adopted amendment to Chapter 55 is to implement the requirements of HB 2201, with respect to a streamlined permitting process for applications required to authorize a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, the amendment to §55.201 adds applications for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as a type of application for which there is no right to a contested case hearing under commission rule.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and 30 TAC Chapter 331, Underground Injection Control.

SECTION DISCUSSION

§55.201, Requests for Reconsideration or Contested Case Hearing.

The adopted amendment adds subsection (i)(8) stating that there is no right to a contested case hearing on an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30, Definitions. The concurrently adopted new Chapter 91 provides the streamlined permitting process for applications for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project. In response to comments, the commission has established a sunset date of January 1, 2018, for this streamlined permitting process, so that applications submitted after that date would not be excluded from contested case hearings.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule establishes procedural requirements for authorizing certain types of projects required for the FutureGen project without holding a contested case hearing. The adopted rule is only a procedural rule for processing applications for permits for the FutureGen project and is not specifically intended to protect the environment or to reduce risks to human health. The adopted rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Furthermore, the adopted rule does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an

express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rule does not meet any of these applicability requirements. First, the rule is consistent with, and does not exceed, the standards set by federal law. Second, the rule does not exceed an express requirement of state law; instead, the rule implements HB 2201. Third, the rule does not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt the rule solely under the general powers of the agency, but rather under the authority of Texas Health and Safety Code (THSC), §382,0565, as added by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; Texas Water Code (TWC), §5.558, as amended by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because the adopted rule does not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rule and performed an assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The adopted rule is intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The adopted rule is only a procedural rule establishing a system to administer the program for permitting FutureGen projects and is not specifically intended to protect the environment or to reduce risks to human health. The adopted rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Promulgation and enforcement of the rule will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rule also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, the adopted rule does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rule will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted revision includes procedural mechanisms to authorize new sources of air contaminants; however, the adopted revision does not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

A FutureGen project may or may not be subject to the federal operating permits program depending on the quantity and type of its emissions and location. If subject, facilities will be required to meet all requirements of the Federal Operating Permits Program.

PUBLIC COMMENT

A public hearing for this rulemaking was held on December 20, 2005, in Austin, and the comment period closed on December 27, 2005. The commission received comments from the United States Environmental Protection Agency, Environmental Defense, the FutureGen Texas Advisory Board, the Center for Energy and Economic Development, and the Clean Coal Technology Foundation of Texas. These commenters addressed the FutureGen rulemaking but did not specifically comment on the amendments to this chapter. The commission also received comments from the Sierra Club Houston Regional Group (HSC).

RESPONSE TO COMMENTS

HSC expressed general opposition to the proposed rules, which would allow a permit to be issued for a FutureGen project without providing the public with an opportunity to request and receive a contested case hearing.

The adopted rules implement HB 2201, passed by the 79th Texas Legislature. Sections 3 and 7 of HB 2201 amend portions of the THSC and the TWC to provide that permit applications for facilities that are a component of the FutureGen project are not subject to contested case hearings. The commission is required by HB 2201 to adopt rules to implement the statutory changes specified by HB 2201. Under the adopted rules, the public retains the ability to participate in the permitting process by submitting written comments during the comment period, and/or by requesting a notice and comment hearing on the permit. The commission is not changing the rule in response to this comment.

The Center for Energy and Economic Development commented that there was no need for a sunset provision in the rules, because the FutureGen initiative represented a one-of-a-kind project. HSC commented that an expiration date, no later than 2010, should be included in the rules. Environmental Defense commented that an expiration date of January 1, 2015, would be appropriate.

The commission is changing the rule in response to these comments and is establishing a sunset date of January 1, 2018. Applications or other requests for authorization submitted after this date would not be excluded from contested case hearings. This change will ensure that the streamlined permitting processes of Chapters 91 and 116 are only used for their intended purpose of providing an incentive for the FutureGen project construction.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.0518, concerning preconstruction permits; THSC, §382.056, concerning notice of intent to obtain permit or permit review and hearing; THSC, §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The adopted amendment implements TWC, §5.558(c) and THSC, §382.0565(d).

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

(e) Any person may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, and the public interest counsel, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file

a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of a voluntary emission reduction permit or an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program); or

(C) amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(a)(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells;

(7) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(8) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018; and

(9) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2006.

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CHAPTER 91. ALTERNATIVE PUBLIC NOTICE AND PUBLIC PARTICIPATION REQUIREMENTS FOR SPECIFIC DESIGNATED FACILITIES

The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §§91.10, 91.20, 91.30, 91.100, 91.110, and 91.120. Sections 91.20, 91.30, and 91.120 are adopted *with changes* to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7831). Sections 91.10, 91.100, and 91.110 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under these adopted rules, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the adopted rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the adopted rules originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and Texas Water Code (TWC), new §5.558 and §27.022, which were created by HB 2201.

Adopted Chapter 91 establishes procedural requirements only. Chapter 91 provides the streamlined processes for issuing permits, registrations, licenses, or other types of authorization under the commission's jurisdiction required to construct, operate, or authorize a component of the FutureGen project. Applications subject to the streamlined permitting process are still subject to the same technical requirements that apply to the type of authorization sought. The commission is required to adopt rules implementing the provisions of HB 2201 not later than September 1, 2006.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and 30 TAC Chapter 331, Underground Injection Control.

SECTION BY SECTION DISCUSSION

SUBCHAPTER A: PURPOSE AND APPLICABILITY

§91.10, Purpose.

The commission adopts this new section to state the purpose of this new chapter. The chapter is intended to establish streamlined permitting processes for the commission to issue permits, registrations, licenses, or other types of authorization required to construct, operate, or authorize a component of the FutureGen project.

§91.20, Applicability.

The commission adopts this new section to specify the applicability of Chapter 91. Subsection (a) provides that the chapter applies procedural requirements for authorizations required to construct, operate, or authorize a component of the FutureGen project as defined under §91.30, Definitions, including applications for permits, registrations, licenses, or other types of authorization. Subsection (b) explains that the applications subject to the Chapter 91 procedures are subject to the technical requirements that apply to the type of authorization sought. Subsection (c) provides that the chapter does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal based on TWC, §5.558(d). Subsection (d) is intended to encompass, under Chapter 91, any type of application under the commission's jurisdiction that may be required for authorizing a component of the FutureGen project whether or not the type of authorization is specifically identified in the chapter. Subsection (e) provides that if the executive director determines that an application is not subject to the requirements of the chapter, the application will be subject to procedural requirements that would otherwise apply to the type of authorization sought. Subsection (f) provides that an applicant may appeal a determination by the executive director that Chapter 91 does not apply to a particular application by filing a motion under §50.139, Motion to Overturn Executive Director's Decision. Subsection (h) has been added as a result of comments received during the comment period, and establishes a sunset date of January 1, 2018. Applications or other requests for authorization submitted after January 1, 2018, would not be eligible to use the streamlined permitting provisions of Chapter 91.

§91.30, Definitions.

The commission adopts definitions for several terms used in the chapter, including a definition for clean coal project, coal, FutureGen project, component of the FutureGen project, and FutureGen project profile. The definitions for these terms originate from TWC, §5.001 and other provisions of HB 2201.

SUBCHAPTER B: PUBLIC NOTICE AND PUBLIC PARTICIPATION

§91.100, Contested Case Hearings.

The commission adopts this new section to state that an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30, is not subject to a contested case hearing. This implements the requirement of TWC, §5.558(c).

§91.110, Public Notice.

The commission adopts this new section to require the same public notice procedures that would otherwise apply to a particular application, for most types of commission permits, except to modify the text of the notice to indicate that the application is not subject to a contested case hearing. Subsection (a) provides that an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30, is subject to the applicable notice requirements under Chapter 39 or other rule under this title for the type of authorization sought, except as provided in this section. Subsection (b) provides that the text of the notice must include the following statements: "The application is for authorization of a component of the FutureGen project and is not subject to a contested case hearing. The commission may hold a public meeting, an informal conference, or form an advisory committee to gather the opinions and advice of interested persons on the application when there is a significant degree of public interest." Subsection (c) provides that the text of the notice must not include a description of procedures for requesting a contested case hearing or the deadline for requesting a contested case hearing.

§91.120, Public Participation.

The commission adopts this new section that states, except for contested case hearings, an application subject to the streamlined process in Chapter 91 is subject to the same public participation requirements, such as public notice, public meeting opportunities, and public commenting, that would otherwise apply to the application, for most types of commission applications. In addition, the commission may conduct public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons on an application. Subsection (a) provides that the commission may hold public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons on an application subject to this chapter when there is a significant degree of public interest. This implements the requirement of TWC, §5.558(b). Subsection (b) provides that except as provided in §91.100, which provides that these applications are not subject to a contested case hearing, an application under this chapter is also subject to the public meeting and public comment processing requirements in Chapter 55 or elsewhere under this title applicable to the type of authorization sought.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code,

§2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The adopted rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements. First, the rules are consistent with, and do not exceed, the standards set by federal law. Second, the rules do not exceed an express requirement of state law, instead these rules implement HB 2201. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of THSC, §382.0565, as added by HB 2201, which directs the commission to by rule implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the commission to by rule implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether this action would constitute a takings under Texas Government Code, Chapter 2007. The adopted rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The adopted rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, the adoption of these rules does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted rules include procedural mechanisms to authorize new sources of air contaminants; however, the adopted rules do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

PUBLIC COMMENT

A public hearing for this rulemaking was held on December 20, 2005, in Austin, and the comment period closed on December 27, 2005. The commission received comments on the proposed rule from the United States Environmental Protection Agency (EPA), Environmental Defense (ED), the Sierra Club Houston Regional Group (HSC), and the Center for Energy and Economic Development (CEED).

RESPONSE TO COMMENTS

HSC indicated support for the provisions of Chapter 91 which implement public notice, public meeting opportunities, and public

comment opportunities before the executive director, and indicated support that the commission can conduct public meetings and hear an appeal of the decision of the executive director.

HSC expressed general opposition to the proposed rules which would allow a permit to be issued for a FutureGen project without providing the public with an opportunity to request and receive a contested case hearing.

The adopted rules implement HB 2201, passed by the 79th Legislature. Sections 3 and 7 of HB 2201 amend portions of the THSC and TWC to provide that permit applications for facilities that are a component of the FutureGen project are not subject to contested case hearings. The commission is required by HB 2201 to adopt rules to implement the statutory changes specified by HB 2201. Under the adopted rules, the public retains the ability to participate in the permitting process by submitting written comments during the comment period, and/or by requesting a notice and comment hearing on the permit. The commission is not changing the rules in response to this comment.

HSC asked that TCEQ provide a description of the economic, social, and environmental benefits of the FutureGen project.

In its findings articulated in HB 2201, the legislature described a number of economic and social benefits the FutureGen project could bring to Texas, including the creation of more than 11,000 jobs, compensation for workers exceeding $374 million, increased tax revenue of $98 million, and an estimated total economic benefit of $1.2 billion. With respect to the environment, the FutureGen project has the potential to produce power with reduced emissions of air contaminants compared to other widely used power generation technologies, and may result in the subsequent wider adoption of clean coal technology in future power generating projects.

HSC commented that FutureGen represents a complex, unproven set of technologies which may have significant impact on air quality, groundwater quality, and surface and subsurface land. HSC commented that an environmental impact statement is needed for any FutureGen proposal so all impacts can be considered by TCEQ and the public. HSC urged that TCEQ determine all air, water, and land environmental impacts and reveal them to the public, such that the public will have an opportunity to comment in an inclusive and comprehensive manner.

As a normal part of the commission's permit review process, the environmental effects on all affected media will be considered. The public will have an opportunity to review and comment on these effects through the public notice and public comment process that is available for each type of applicable permit.

HSC submitted numerous comments speculating on the effects of carbon dioxide sequestration and underground injection, and acknowledged that little data exists on this technology. HSC urged the commission to determine air, water, and land effects through its permitting authority. Examples of their concerns included: 1) the effects of existing wells in the carbon sequestration area; 2) the effect of carbon dioxide injection on saline aquifer water quality; and 3) the harm that may come to soil bacteria as a result of carbon sequestration.

The commission's federally authorized Underground Injection Control (UIC) Program has significant experience and data relating to protection of fresh water from the potential adverse impact of underground injection of liquid waste, including proper evaluation of injection and confining zones, subsurface faults and fractures, and other wells in the area of review. While the commission does not have data on some of the specific carbon dioxide injection concerns listed by HSC, the commission notes that underground injection of carbon dioxide has been commonly used for enhanced recovery of oil and gas under the Railroad Commission of Texas jurisdiction without any known harmful effects. The commission also recognizes that the technical concerns posed by HSC are the subject of significant research efforts being conducted by the Texas Bureau of Economic Geology in association with a number of other research institutions, participating industries, and government agencies. The commission will review individual requests for well authorization under these rules using the environmentally protective rules and procedures of the UIC well permitting program. Therefore, the commission is not changing the rules in response to these comments.

HSC suggested defining the terms "integrated sequestration," "sequester," and "carbon sequestration" since these terms are relevant to define eligible projects. HSC also suggested defining the terms "carbon dioxide capture technology" and the phrase "significant degree of public interest."

The commission reviewed the use of these terms in the context of the FutureGen project and determined that the rule language provides sufficient limits on eligible projects and that definitions of these terms are not necessary. The commission is not changing the rules in response to this comment.

The EPA commented that the definition of coal used in the proposed rules should be revised to match the definition of coal specified in 40 Code of Federal Regulations Part 60, Subpart Da, §60.41Da.

HB 2201 specified a definition of coal to be used in association with permitting of FutureGen sources and the commission believes it is necessary to maintain the proposed definition of coal for consistency with the statute. The commission is not changing the rules in response to this comment.

CEED commented that there was no need for a sunset provision in the rules, because the FutureGen initiative represented a one-of-a-kind project. HSC commented that an expiration date, no later than 2010, should be included in the rules. ED commented that an expiration date of January 1, 2015, would be appropriate.

The commission is changing the rule in response to these comments and is establishing a sunset date of January 1, 2018. Applications or other requests for authorization submitted after this date would not be excluded from contested case hearings. This change will ensure that the streamlined permitting processes of Chapters 91 and 116 are only used for their intended purpose of providing an incentive for the FutureGen project construction.

ED commented that the proposed rules should contain a provision ensuring that the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons, as mandated by HB 2201.

The suggested provision was proposed and is being adopted in §91.120.

SUBCHAPTER A. PURPOSE AND APPLICABILITY

30 TAC §§91.10, 91.20, 91.30

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize

the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The adopted new sections implement TWC, §5.558(c) and THSC, §382.0565(d).

§91.20. Applicability.

(a) This subchapter applies to procedural requirements for authorizations required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), including applications for permits, registrations, licenses, or other types of authorization under the following:

(1) Chapter 295 of this title (relating to Water Rights, Procedural);

(2) Chapter 297 of this title (relating to Water Rights, Substantive);

(3) Chapter 305 of this title (relating to Consolidated Permits);

(4) Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(5) Chapter 329 of this title (relating to Drilled or Mine Shafts);

(6) Chapter 330 of this title (relating to Municipal Solid Waste);

(7) Chapter 331 of this title (relating to Underground Injection Control);

(8) Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Solid Waste); and

(9) Chapter 336 of this title (relating to Radioactive Substance Rules).

(b) Applications for permits, registrations, licenses, or other types of authorization required to construct, operate, or authorize a component of the FutureGen project as defined under §91.30 of this title are subject to the technical requirements under the commission program, rule, or statute that the application is sought.

(c) This subchapter does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

(d) The executive director may apply the requirements of this subchapter to any application not otherwise specified in this subchapter for which the executive director determines constitutes a bona fide component of the FutureGen project.

(e) If the executive director determines that an application is not subject to the applicability of this subchapter, the application will be subject to the permitting and public participation process that would otherwise apply to the type of authorization sought.

(f) An applicant may appeal a determination by the executive director under subsection (e) of this section, by filing a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

(g) Applications for authorization submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall be subject to the public notice and participation procedures stated in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), and any applicable rules in Chapters 39 and 55 of this title (relating to Public Notice and Requests for Reconsideration and Contested Case Hearings; Public Comment).

(h) This chapter does not apply to any applications or other requests for authorization submitted after January 1, 2018.

§91.30. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Clean coal project--The installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a by-product of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(2) Coal--All forms of coal, including lignite.

(3) Component of the FutureGen project A process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(4) FutureGen project A common reference to the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy.

(5) FutureGen project profile--A standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
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Proposal publication date: November 25, 2005
For further information, please call: (512) 239-5017

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SUBCHAPTER B. PUBLIC NOTICE AND PUBLIC PARTICIPATION

30 TAC §§91.100, 91.110, 91.120

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The adopted new sections implement TWC, §5.558(c) and THSC, §382.0565(d).

§91.120. Public Participation.

(a) The commission may hold public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons on an application subject to this chapter when there is a significant degree of public interest.

(b) Except as provided in §91.100 of this title (relating to Contested Case Hearings), an application under this chapter is also subject to the public meeting and public comment processing requirements of Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment) or elsewhere under this title that is applicable to the type of authorization sought.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION
SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.621

The Texas Commission on Environmental Quality (commission) adopts the repeal of §116.621 *without change* to the proposal as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5543).

The repeal will also be submitted to the United States Environmental Protection Agency (EPA) withdrawing this section from consideration as a revision to the state implementation plan originally submitted on September 11, 2000.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEAL

The repealed standard permit for municipal solid waste landfills required that separate authorizations be obtained for activities typically found at larger landfills but that do not directly involve landfill cell construction or waste disposal. These activities include fuel storage, welding, abrasive blasting, and tire shredding. The commission adopted a new standard permit that can be used to authorize these and most other activities without obtaining the separate authorization that it has placed in 30 TAC Chapter 330, Municipal Solid Waste, in order to consolidate rules for facilities that have environmental effects in more than one media.

SECTION DISCUSSION

The standard permit repealed in this action is replaced by a standard permit in new Subchapter U of Chapter 330 that authorizes air emissions from landfills and landfill support activities. The new standard permit in Chapter 330 will take effect on September 1, 2006, which will also be the effective date of the repeal of §116.621.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeal does not meet the definition of a "major environmental rule" as defined in that statute. Therefore, Texas Government Code, §2001.0225, does not apply to this rulemaking. According to Texas Government Code, §2001.0225(g)(3), a "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Under the authority of Texas Clean Air Act, §382.05195, the commission adopted a new standard permit in Chapter 330, Subchapter U, to replace the repealed standard permit. The standard permit in Chapter 330 can be used to authorize other common landfill activities that are not allowed under §116.621 and that require separate authorization.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed a preliminary assessment of whether this action would constitute a takings under Texas Government Code, Chapter 2007. Promulgation and enforcement of this repeal is neither a statutory nor a constitutional taking of private real property. The repeal of §116.621 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this action does not meet the definition of a takings under Texas Government Code, §2007.002(5). This rulemaking repeals the municipal solid waste landfill standard permit adopted by the commission in §116.621. A new standard permit in Chapter 330 will replace the repealed section. Landfill owners and operators would not be precluded from obtaining an air quality permit. The new standard permit will provide a single authorization for more activities at landfills than are currently allowed under §116.621. Current holders of registrations under §116.621 should certify under the new standard permit if modifications have been made to the site, but the commission will not charge an additional fee. Therefore, the repeal will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because §116.621 contained applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the new standard permit in Chapter 330 for each landfill affected at their site.

PUBLIC COMMENT

The commission held a public hearing on this proposal in Austin on September 29, 2005. During the public comment period that closed on October 31, 2005, the commission received comments from Allied Waste Services (Allied), North Texas Municipal Water District (NTWMD), Russell, Moorman, and Rodriguez, LLP (RMR), and Texas Disposal Systems (TDS). All of the commenters opposed the repeal.

RESPONSE TO COMMENTS

Allied, NTWMD, TDS, and RMR urged that unmodified landfills be allowed continued use of their existing authorizations until expiration. Certification under the new air standard permit in Chapter 330 would require re-evaluation or an audit of their entire landfill operations. Allied further commented that the certification for existing landfills that have not been modified is burdensome, costly, and provides no additional benefit to human health or the environment.

The commission is deleting the certification requirement for unmodified landfills from the concurrent adoption of the new air standard permit in Chapter 330, and the authorization of unmodified landfills under §116.621 will remain in effect until normal expiration. Landfills that do not continue to meet the requirements of §116.621 because of modification or addition of other facilities to the site should be certified under the new standard permit by its effective date of September 1, 2006.

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC,

§382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; and THSC, §382.05195, concerning Standard Permit, which authorizes the commission to issue standard permits for new and existing similar facilities.

The adopted repeal implements TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, and 382.05195.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. PERMITS FOR SPECIFIC DESIGNATED FACILITIES

30 TAC §§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426, 116.1428

The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426, and 116.1428. Sections 116.1402, 116.1404, 116.1408, 116.1414, 116.1416, 116.1422, and 116.1424 are adopted *with changes* to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7831). Sections 116.1400, 116.1406, 116.1410, 116.1418, 116.1420, 116.1426, and 116.1428 are adopted *without changes* to the proposed text and will not be republished. The new sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide (CO_2) enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under the adopted rules, eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the adopted rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the adopted rules originates from Texas Health and Safety Code (THSC), new §382.0565, Clean Coal Project Permitting Procedure, and Texas Water Code (TWC), new §5.558 and §27.022, which were created by HB 2201.

The purpose of the revisions to Chapter 116 is to implement the requirements of HB 2201, specifically, to establish a reasonably streamlined procedure for the commission to authorize the emission of certain air contaminants by projects within the commission's jurisdiction that are a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, public notice requirements for these applications need to be modified to reflect that the applications are not subject to contested case hearings.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; and 30 TAC Chapter 331, Underground Injection Control.

SECTION BY SECTION DISCUSSION

§116.1400. Purpose; and §116.1402. Applicability.

The commission adopts these new sections to specify the purpose and applicability of new Subchapter L, Permits for Specific Designated Facilities. Specifically, the purpose of the new subchapter is to establish reasonably streamlined procedures to issue authorization for certain projects; those procedures are applicable to authorizations to construct and operate a component of the FutureGen project. In response to comments, the commission has revised §116.1402 to clarify that modifications that would trigger amendments to a FutureGen permit will be subject to the notice and hearing provisions of Subchapter L, and would not be subject to a contested case hearing. In response to comments, the commission has also revised §116.1402 to establish a sunset date of January 1, 2018. Applications or other requests for authorization submitted after January 1, 2018, would not be eligible to use the streamlined permitting provisions established in Subchapter L. In response to comments, the commission has also revised certain phrases for greater clarity.

§116.1404. Permit Required.

The adopted new section requires anyone planning to construct a component of the FutureGen project designated in §116.1402 that may emit air contaminants into the air of this state to obtain a permit under this chapter or qualify for a permit by rule under 30 TAC Chapter 106, Permits by Rule. The commission has revised this section in response to comments, specifically to clarify that modifications that trigger amendments to a FutureGen permit will be subject to the notice and hearing provisions of Subchapter L, and to indicate that other authorizations under Chapter 116, such as a standard permit, may be used to authorize facilities that are a component of the FutureGen project.

§116.1406. Compliance History.

The adopted new section requires compliance history reviews for any applications under the new subchapter.

§116.1408. Definitions.

The adopted new section contains definitions applicable to the new subchapter, clean coal projects, and the FutureGen project. Specifically, the section defines: clean coal project, coal, FutureGen project, component of the FutureGen project, FutureGen project profile, hearing, and designated project. In response to comments, the commission has added a definition of "Hearing" to ensure that this term as used in Subchapter L is understood to mean a notice and comment hearing and not a contested case hearing.

§116.1410. Emissions Profile for FutureGen Projects.

The adopted new section establishes an emissions profile for FutureGen projects. This emissions profile is included in the event that the United States Department of Energy does not specify an emissions profile for the FutureGen project. The emissions profile establishes limitations for the emissions of air contaminants from a component of a FutureGen project.

§116.1414. Applications for Facilities that are Components of a Designated Project.

The adopted new section provides the requirements for applications submitted under new §116.1404 and requires any application to be submitted with a completed Form PI-1, Facility Permit Application. New §116.1414(1) - (12) requires applicants to make certain demonstrations regarding: protection of public health and welfare; measurement of emissions; New Source Performance Standards; National Emissions Standards for Hazardous Air Pollutants (NESHAPs); NESHAPs for source categories (applicable maximum achievable control technology standard); performance demonstrations; nonattainment review; prevention of significant deterioration review; air dispersion modeling or ambient monitoring; federal standards of review for constructed or reconstructed major sources of hazardous air pollutants; application content; and best available control technology (BACT). In response to comments, the commission has made several minor changes to this section to improve consistency with permit application requirements in other subchapters of Chapter 116.

§116.1416. Public Notice.

The adopted new section establishes public notice requirements for applications to construct a component of a FutureGen facility. These requirements include the following: publication of the draft permit and preliminary decision in a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site; and availability of a copy of the application and draft permit for review and copying at a public place. New §116.1416(a)(1) - (10) states the required contents of the notice, which in addition to factual information about the applicant and the proposed location of the facility, includes a description of the comment procedures; a statement that a person affected by the emission of air pollutants is entitled to request a notice and comment hearing under §116.1418, Public Participation, in a font size that provides emphasis and distinguishes it from the rest of the notice; a description of the procedure by which a person may be placed on a mailing list for further information; the time and location of any public meeting, as applicable; and the name, address, and phone number of the commission office to be contacted for further information.

New §116.1416(b) and (d) provides the following procedural requirements: the applicant shall provide the executive director and all local air pollution control agencies having jurisdiction a copy of the public notice and date of publication; and the executive director shall make available for public inspection during the public comment period a copy of the draft permit and complete application.

New §116.1416(e) establishes the requirements for the sign that the applicant shall place at the site declaring the filing of the application and stating how the executive director may be contacted for further information; new §116.1416(c) requires the applicant to submit certification of compliance with the signage requirements in §116.1416(e).

New §116.1416(f) requires that the executive director receive public comment for 30 days after the notice is published; new §116.1416(g) allows the draft permit to be changed based on comments received. In response to comments, the commission has added a new §116.1416(h), concerning alternative language public notice and sign-posting requirements consistent with other permit applications under Chapter 116.

§116.1418. Public Participation.

The adopted new section provides specific procedures for public participation in the issuance of a FutureGen permit. The new section states that permit applications for a component of a FutureGen project are not subject to a contested case hearing, establishes a process for issuing permits required to construct a component of the FutureGen project, and provides procedures for public comment. THSC, §382.0565(c), and TWC, §5.558(b), both require the commission's use of "public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons." With respect to the use of public meetings, the intent of new §116.1418 is to provide a notice and comment hearing procedure to facilitate those public meetings. Any public hearing held under this subchapter is not an evidentiary proceeding.

New §116.1418(a) states that applications under this chapter are not subject to the contested case hearing process, but are subject to a notice and comment hearing process.

New §116.1618(b) - (m) specifies the notice and comment hearing process. Specifically, subsections (b) - (m) allow for any person affected by emissions from a site regulated by this subchapter to request, within the 30-day comment period, the executive director to hold a notice and comment hearing on the draft permit; provide that the executive director shall decide whether to hold a hearing; state the requirements for publication of notice of a hearing on a draft permit; require the applicant to submit to the executive director and all local air pollution agencies having jurisdiction a copy of the notice of hearing and date of publication; allow the hearing notice to be combined with the notice of the draft permit required by this subchapter; allow any person to submit oral or written statements and data concerning the draft permit; require that any person believing that the draft permit or preliminary decision are inappropriate shall submit all reasonable arguments before the end of the comment period; and state the requirements for the executive director in responding to comments. These subsections also include administrative provisions requiring a tape recording or written transcript of the hearing to be made available to the public; requiring the executive director to keep and make available to the public a record of all com-

ments received and issues raised at the hearing; allowing the draft permit to be changed based on comments; and establishing the procedure for the executive director to provide notice of the executive director's final decision, the executive director's response to any comments submitted during the comment period or at the public hearing specified in this section, and the identification of any change in the condition of the draft permit and the reasons for the change to any person who commented during the public comment period or at the hearing, and to the applicant.

Finally, new §116.1418(n) requires the commission to use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons for all permits issued under this subchapter. Any public meetings held under this subchapter shall follow the notice and comment hearing procedures as defined in subsections (a) - (m). The executive director shall hold a public meeting on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or if the executive director determines that there is substantial public interest in the proposed activity.

§116.1420. Permit Fee.

The adopted new section requires payment of a permit fee consistent with the requirements of Chapter 116, Subchapter B, Division 4, Permit Fees.

§116.1422. General and Special Conditions.

The adopted new section states certain general and special conditions that will be included in permits issued under this subchapter. The general conditions in new §116.1422(b) include a report of construction progress, startup notification, sampling requirements, equivalency of methods, recordkeeping, maximum allowable emission rates, maintenance of emission control, and compliance with applicable rules. New §116.1422(c) allows special conditions that are more restrictive than those in this title to be attached to a permit. In response to comments, the commission added a requirement that an additional startup notification be submitted to any local air pollution control agencies having jurisdiction.

§116.1424. Amendments and Alterations of Permits Issued Under this Subchapter.

The adopted new section provides requirements for amendments or alterations of permits issued under this subchapter. In response to comments, the commission revised this section to clarify that amendments and alterations to a FutureGen permit would not be subject to a contested case hearing.

§116.1426. Renewal of Permits Issued Under this Subchapter.

The adopted new section provides for renewals of permits issued under this subchapter.

§116.1428. Delegation.

The adopted new section delegates to the executive director authority to take action on a permit issued under this subchapter.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule" as defined in the statute. Therefore, Texas Government Code, §2001.0225, does not apply to this rulemaking. "Major environmental rule" is defined in Texas Government Code, §2001.0225(g)(3), as a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are intended to establish notice requirements for authorizing certain types of projects required for the FutureGen project. The adopted rules are only procedural rules establishing public notice requirements to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The adopted rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the definition of "major environmental rule" in Texas Government Code, §2001.0225.

Furthermore, the adopted rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements. First, the adopted rules are consistent with, and do not exceed, the standards set by federal law. Second, the adopted rules do not exceed an express requirement of state law, instead these rules implement HB 2201. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of THSC, §382,0565, as added by HB 2201, which directs the commission, by rule, to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the commission, by rule, to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of CO_2 produced by a clean coal project to the extent authorized by federal law.

Because the adopted rules do not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The adopted rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The adopted rules are only procedural rules

establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The adopted rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, the adopted rules do not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted rules include procedural mechanisms to authorize new sources of air contaminants; however, the rules do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because new Subchapter L includes applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the new Subchapter L requirements for each emission unit affected by the addition of the requirements in Subchapter L at their site.

PUBLIC COMMENT

A public hearing for this rulemaking was held on December 20, 2005, in Austin, and the comment period closed on December 27, 2005. The commission received comments from EPA, Environmental Defense (ED), the FutureGen Texas Advisory Board (FGTAB), the Sierra Club Houston Regional Group (HSC), the Center for Energy and Economic Development (CEED), and the Clean Coal Technology Foundation of Texas (CCTFT).

RESPONSE TO COMMENTS

HSC supported the provisions added to Chapters 91 and 116, which implement public notice, public meeting opportunities, and public comment opportunities before the executive director, and indicated support that the commission can conduct public meetings and hear an appeal of the decision of the executive director.

HSC expressed general opposition to the proposed rules that would allow a permit to be issued for a FutureGen project without providing the public with an opportunity to request and receive a contested case hearing.

The commission is not changing the rules in response to this comment. The adopted rules implement HB 2201, passed by the 79th Texas Legislature. Sections 3 and 7 of HB 2201 amend portions of the THSC and TWC to provide that permit applications for facilities that are a component of the FutureGen project are not subject to contested case hearings. The commission is required by HB 2201 to adopt rules to implement the statutory changes specified by HB 2201. Under the adopted rules, the public retains the ability to participate in the permitting process by submitting written comments during the comment period, and/or by requesting a notice and comment hearing on the permit.

HSC asked that TCEQ provide a description of the economic, social, and environmental benefits of the FutureGen project.

In its findings articulated in HB 2201, the legislature described a number of economic and social benefits that the FutureGen project could bring to Texas, including the creation of more than 11,000 jobs, compensation for workers exceeding $374 million, increased tax revenue of $98 million, and an estimated total economic benefit of $1.20 billion. With respect to the environment, the FutureGen project has the potential to produce power with reduced emissions of air contaminants compared to other widely used power generation technologies, and may result in the subsequent wider adoption of clean coal technology in future power generating projects.

HSC commented that FutureGen represents a complex, unproven set of technologies that may have significant impact on air quality, groundwater quality, and surface and subsurface land. HSC commented that an environmental impact statement is needed for any FutureGen proposal so all impacts can be considered by TCEQ and the public. HSC urged that TCEQ determine all air, water, and land environmental impacts and reveal them to the public, such that the public will have an opportunity to comment in an inclusive and comprehensive manner.

As a normal part of the commission's permit review process, the environmental effects on all affected media will be considered. The public will have an opportunity to review and comment on these effects through the public notice and public comment process that is available for each type of applicable permit.

HSC submitted numerous comments speculating on the effects of CO_2 sequestration and underground injection, and acknowledged that little data exists on this technology. HSC urged the commission to determine air, water, and land effects through its permitting authority. Examples of its concerns included: 1) the effects of existing wells in the carbon sequestration area; 2) the

effect of CO_2 injection on saline aquifer water quality; and 3) the harm that may come to soil bacteria as a result of carbon sequestration.

The commission's federally authorized Underground Injection Control (UIC) Program has significant experience and data relating to protection of fresh water from the potential adverse impact of underground injection of liquid waste, including proper evaluation of injection and confining zones, subsurface faults and fractures, and other wells in the area of review. While the commission does not have data on some of the specific CO_2 injection concerns listed by HSC, the commission notes that underground injection of CO_2 has been commonly used for enhanced recovery of oil and gas under the Railroad Commission of Texas jurisdiction without any known harmful effects. The commission also recognizes that the technical concerns posed by HSC are the subject of significant research efforts being conducted by the Texas Bureau of Economic Geology in association with a number of other research institutions, participating industries, and government agencies. The commission will review individual requests for well authorization under these rules using the environmentally protective rules and procedures of the UIC well permitting program. Therefore, the commission is not changing the rules in response to these comments.

FGTAB, CCTFT, and CEED commented that proposed Chapter 116, Subchapter L should be clarified to ensure that the initial permitting and subsequent amendments to a FutureGen project permit are not subject to the contested case hearings process. FGTAB and CCTFT suggested that Chapter 116 should state that Subchapter L will define the complete procedural requirements that apply to the issuance of any or all permits for a component of the FutureGen facility.

The commission agrees that the proposed rules should be clarified to ensure that both initial permitting, and amendments to a FutureGen permit, are not subject to the contested case hearing process. The commission is revising §§116.1402, 116.1404, and 116.1424 accordingly.

ED commented that an exemption from contested case treatment for all amendments and alterations of FutureGen permits would be too broad, and suggested that an amendment or alteration should not qualify for streamlined permitting unless the proposed changes themselves satisfy the HB 2201 definition of a FutureGen project component.

In response to other comments, the commission has added language to §§116.1402, 116.1404, and 116.1424 to clarify that amendments and alterations of a FutureGen permit are also eligible to use the streamlined public participation requirements contained in Subchapter L. The streamlining provisions of HB 2201 only apply to the construction or modification of a component of the FutureGen project.

CEED commented that there was no need for a sunset provision in the rules, because the FutureGen initiative represented a one-of-a-kind project. HSC and ED commented that an expiration date should be included in the rules. HSC suggested an expiration date of 2010, and ED suggested an expiration date of January 1, 2015.

The commission is changing the rule in response to this comment and is establishing a sunset date of January 1, 2018. Applications or other requests for authorization submitted after this date would not be excluded from contested case hearings. This change will ensure that the streamlined permitting processes of Chapters 91 and 116 are only used for their intended purpose of providing an incentive for the FutureGen project construction.

ED commented that the proposed rules should contain a provision ensuring that the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons, as mandated by HB 2201.

The suggested provision was proposed and is being adopted in §116.1418(n).

ED commented that the commission should not exempt nonattainment or prevention of significant deterioration reviews from contested case hearings, and to do so would be inconsistent with federal clean air law.

Although federal law requires the availability of a hearing for nonattainment and prevention of significant deterioration permits, a notice and comment style hearing is sufficient to satisfy the applicable federal requirements. The commission is not changing the rules in response to this comment.

HSC suggested defining the terms "integrated sequestration," "sequester," and "carbon sequestration" since these terms are relevant to define eligible projects. HSC also suggested defining the term "carbon dioxide capture technology."

The commission reviewed the use of these terms in the context of the FutureGen project and determined that the rule language provides sufficient limits on eligible projects and that definitions of these terms are not necessary. The commission is not changing the rules in response to this comment.

HSC questioned how the commission defines "reasonably streamlined procedures" under §116.1400.

The term "reasonably streamlined procedures" refers to the altered public participation process for FutureGen permit applications, specifically the use of a notice and comment hearing process instead of a contested case hearing process.

EPA commented that the definition of coal used in the proposed rules should be revised to match the definition of coal specified in 40 Code of Federal Regulations Part 60, Subpart Da, §60.41Da.

HB 2201 specified a definition of coal to be used in association with permitting of FutureGen sources and the commission believes it is necessary to maintain the proposed definition of coal to maintain consistency with HB 2201. The commission is not changing the rules in response to this comment.

FGTAB, CCTFT, and CEED suggested rephrasing §116.1402(b) to extend the applicability of the FutureGen rules to applications for permit amendments.

The commission agrees with the suggested change and has rephrased the section accordingly.

FGTAB, CCTFT, and CEED commented that proposed §116.1404 appears to limit the options for authorizing a component of the FutureGen project, because it only refers to permits issued under Subchapter L and to permits by rule under Chapter 106. FGTAB and CEED noted that other options, such as standard permits, should be available.

The commission agrees that the proposed rules should be clarified to ensure that all types of authorization, including standard permits, are available to authorize components of the FutureGen project. The commission has revised §116.1404 accordingly.

HSC commented that §116.1410 should address how leaks of CO_2 to the atmosphere or to water would be addressed in the applicable permit.

As part of the permitting process, TCEQ specifies appropriate leak detection and repair (LDAR) programs in situations where there is a potential for harmful leaks. These LDAR programs vary depending on the nature of the process and the nature of the air contaminants involved. However, the commission typically does not require LDAR programs for emissions of CO_2, because the commission does not currently regulate emissions of CO_2 when it is directly vented to the atmosphere or as a fugitive emission. At this time, the commission does not have enough information to specify what, if any, LDAR program will be required for any proposed FutureGen installation.

EPA commented that the emissions profile in §116.1410(1) and (2) is based on percentages of sulfur and mercury concentrations found in the coal, instead of a specific limit based on control technologies, and allows for emissions that are too variable to ensure low emission rates. EPA suggested that a discussion should be provided to explain how the emission limitations in the proposed rules were derived. EPA also commented that a discussion should be provided to explain how the emission limitations for nitrogen oxides and particulate emissions in §116.1410 were determined.

The emission profile specified in §116.1410 was established by HB 2201, which amended portions of the THSC to define the profile in statute. In general, the commission is obligated to follow the profile in the statute. However, in order to obtain a permit under Chapter 116, a proposed facility is required to employ BACT to control emissions from the facility. If control technology advances to a point where BACT would result in lower emissions than the profile, the facility would be required to comply with a lower allowable emission rate that reflects applicable BACT.

EPA commented that a contingency statement should be included in §116.1410 so that if future technology results in the ability to achieve lower emission rates, the regulations will be revised to ensure that they remain up-to-date with current technology.

In order to obtain a permit under Chapter 116, a proposed facility is required to meet BACT, regardless of the emission limitations in the emission profile. If BACT would result in an emission rate that is lower than the rate specified in the profile, the applicant would be required to include BACT in the design of the facility. Because existing rules already require BACT, adding EPA's suggested change would be redundant. The commission is not changing the rules in response to this comment.

HSC commented that §116.1414 does not require compliance with EPA regional haze rules or interstate transport rules, and that any FutureGen proposal must comply with rules under those EPA programs.

A FutureGen installation is potentially subject to a wide range of state and federal regulations. Although §116.1414 does not specifically refer to the regulations cited by HSC's comment, compliance with all applicable federal regulations is still required. The fact that §116.1414 does not identify every regulation does not relieve a FutureGen source from the obligation to comply with all applicable regulations. It is not practical to identify every applicable rule or regulation in the adopted rules; therefore, the commission is not adding a reference to the specified rules.

FGTAB and CCTFT suggested inserting the word "applicable" prior to the phrase "rules and regulations" in §116.1414(1) for consistency with similar language in Chapter 116, Subchapter B. FGTAB suggested inserting the word "significant" prior to the phrase "air contaminant" in §116.1414(2) and deleting the phrase "at least" prior to the phrase "the requirements of any applicable" in §116.1414(3) - (5), for consistency with similar language in Chapter 116, Subchapter B.

The commission agrees with the suggested changes and has revised the indicated section accordingly.

HSC commented that §116.1414(2) and (6) should be revised to specify that the permit will contain provisions for measuring the emission of air contaminants, including initial performance testing and emission monitoring. HSC commented that the monitoring of process variables, or parametric or predictive monitoring, would not be sufficient to demonstrate the performance of the technology or measure the actual contaminants being released.

The commission has revised §116.1414(2) to state that the permit will contain provisions for measuring the emission of air contaminants as determined by the commission. The commission disagrees with the remainder of HSC's comment. As part of the permit review, appropriate methods of demonstrating compliance and monitoring compliance will be identified and incorporated into the permit. The commission acknowledges that the monitoring of process variables, or other parametric or predictive monitoring, is not suitable in every circumstance, but those technologies should not be excluded from possible use.

EPA commented that §116.1414(12) should state that a proposed facility shall use lowest achievable emission rate (LAER) technology if the project is located in a nonattainment area.

All projects located in nonattainment areas must comply with applicable requirements of Chapter 116, Subchapter B, Division 5, Nonattainment Review. This includes the FutureGen project. Because the applicable requirements concerning nonattainment review and LAER are fairly detailed and are already specified in Chapter 116, Subchapter B, it would be redundant to repeat those requirements within Subchapter L. A reference to these nonattainment permitting requirements is already included in §116.1414(7). The commission is not changing the rules in response to this comment.

FGTAB, CCTFT, and CEED commented that proposed §116.1416 repeatedly refers to hearings and that further clarification is needed to avoid misinterpretation or conflicts. FGTAB and CEED suggested that the term "hearings" be defined to mean notice and comment hearings.

The commission concurs with this comment and has added a definition of "Hearing" to §116.1408, to ensure that when the term is used within Subchapter L, the term will mean a notice and comment hearing and not a contested case hearing.

HSC commented that the public notice requirements in §116.1416 for both newspaper notices and signs should be in at least two languages (or as many as are spoken by people in the area), similar to what the commission requires for federal operating permits. HSC made a similar comment on §116.1418 concerning notices for public meetings and public hearings.

The commission has added additional language to §116.1416 to provide for alternative language public notice.

HSC commented that the commission should define the phrases "reasonably ascertainable public issues" and "reasonably available arguments" as used in §116.1418(j) to provide greater clarity for the public.

These phrases have the same meaning as used in the existing notice and hearing requirements of Chapter 122, and they have not been a significant source of confusion. The commission is not changing the rules in response to this comment.

HSC commented that the commission should make clear in §116.1422 that the permit application is a legal document and its conditions are legally binding on the permit holder.

Except where otherwise noted, permits issued under Chapter 116, Subchapter L, remain subject to the requirements of Chapter 116, Subchapter B, New Source Review Permits. Section 116.116(a), Changes to Facilities, requires that representations in a permit application are conditions upon which the permit is issued. The suggested change to §116.1422 would be redundant, and the commission is not changing the rules in response to this comment.

HSC commented that §116.1422(b)(2)(A), which requires a notification of startup to the appropriate regional office, should include a similar notification requirement for local air pollution control agencies having jurisdiction so those local agencies would be informed and have an opportunity to observe the commencement of operation.

The commission agrees with HSC's comment and is making the suggested change to the rules.

HSC commented that documentation of compliance with permit conditions under §116.1422(b)(5)(E) should be maintained for at least five years, and not two years as proposed. HSC commented that the time period should be consistent with the five-year compliance history review.

The two-year record retention period is consistent with the normal record retention period used for air permits, and the commission believes it is sufficient to provide a means to determine compliance. The commission is not changing the rules in response to this comment.

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.0518, concerning preconstruction permits; THSC, §382.056, concerning notice of intent to obtain permit or permit review and hearing; THSC, §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The adopted new sections implement TWC, §5.558(c) and THSC, §382.0565(d).

§116.1402. Applicability.

(a) This subchapter applies to applications for authorization required to construct and operate a component of the FutureGen project, and to applications to authorize modification of a component of the FutureGen Project.

(b) This subchapter does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

(c) This subchapter does not apply to any applications or other requests for authorization submitted after January 1, 2018.

§116.1404. Permit Required.

Any person who plans to construct or modify a component of a project as designated in §116.1402 of this title (relating to Applicability) that may emit air contaminants into the air of this state must obtain a permit under this chapter or qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

§116.1408. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Clean coal project--The installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(2) Coal--All forms of coal, including lignite.

(3) Component of the FutureGen project--A process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(4) Designated project--Any project subject to the jurisdiction of the commission and designated by the legislature as subject to the alternate public notice requirements in this subchapter.

(5) FutureGen project--A common reference to the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy.

(6) FutureGen project profile--A standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

(7) Hearing--A notice and comment hearing and not a contested case hearing.

§116.1414. Applications for Facilities that are Components of a Designated Project.

Any application submitted under §116.1404 of this title (relating to Permit Required) must include a completed Form PI-1, General Application for Air Preconstruction Permits and Amendments. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information that must be provided before the application is deemed complete. In order to be granted a permit, the applicant for a project as designated in §116.1402(a) of this title (relating to Applicability) shall submit information to the commission that demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the facility will comply with all applicable rules and regulations of the commission and with the intent of Texas Health and Safety Code, Chapter 382, the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people.

(2) Measurement of emissions. The permit will have provisions for measuring the emission of significant air contaminants as determined by the commission. These provisions may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual," portable analyzers, or emissions calculations if a known process variable is monitored.

(3) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet the requirements of any applicable NSPS as listed under 40 CFR Part 60, promulgated by the United States Environmental Protection Agency (EPA) under the authority granted under Federal Clean Air Act (FCAA), §111, as amended.

(4) National Emission Standards for Hazardous Air Pollutants (NESHAPs). The emissions from each facility as defined in 40 CFR Part 61 will meet the requirements of any applicable NESHAPs, as listed under 40 CFR Part 61, promulgated by EPA under the authority granted under FCAA, §112, as amended.

(5) NESHAPs for source categories. The emissions from each affected facility shall meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112, or as listed in Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)).

(6) Performance demonstration. The facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after the permit has been issued in order to demonstrate further that the facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(7) Nonattainment review. A facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(8) Prevention of significant deterioration review. A facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(9) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the facility.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the facility is an affected source as defined in §116.15(1) of this title (relating to Section 112(g) Definitions), the affected source shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(11) Application content. In addition to any other requirements of this subchapter, the applicant shall:

(A) identify each facility to be included in the permit;

(B) identify the air contaminants emitted; and

(C) provide emission rate calculations.

(12) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

§116.1416. Public Notice.

(a) The executive director shall direct the applicant to publish a notice of draft permit and preliminary decision, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The executive director shall direct the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The notice shall contain the following information:

(1) the permit application number;

(2) the applicant's or permit holder's name, address, and telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information;

(3) a description of the location of the site or proposed location of the site;

(4) a description of the activity or activities involved in the permit application;

(5) the location and availability of the following:

(A) the complete permit application;

(B) the draft permit;

(C) all other relevant supporting materials in the public files of the agency;

(6) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(7) a statement that a person who may be affected by the emission of air pollutants from the facility or facilities is entitled to request a notice and comment hearing, under §116.1418 of this title (relating to Public Participation), printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(8) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit;

(9) if applicable, the time and location of any public meeting; and

(10) the name, address, and phone number of the commission to be contacted for further information.

(b) The applicant shall submit a copy of the public notice and date of publication to the executive director and any local air pollution control agencies having jurisdiction over the site.

(c) The applicant shall submit a statement to the executive director certifying that the sign required by subsection (e) of this section has been posted consistent with the provisions of that subsection.

(d) The executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office and at the appropriate commission regional office where the site is located.

(e) At the applicant's expense, a sign shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the executive director may be contacted for further information.

(1) The sign shall be provided by the applicant and shall substantially meet the following requirements.

(A) The sign shall consist of dark lettering on a white background and shall be not smaller than 18 inches by 28 inches and all lettering shall be no less than 1-1/2 inches in size and block printed capital lettering.

(B) The sign shall be headed by the words "PROPOSED AIR QUALITY PERMIT."

(C) The sign shall include the words "APPLICATION NO." and the number of the permit application.

(D) The sign shall include the words "for further information contact."

(E) The sign shall include the words "TEXAS COMMISSION ON ENVIRONMENTAL QUALITY," and the address of the appropriate commission regional office.

(F) The sign shall include the phone number of the appropriate commission regional office.

(G) The sign shall include the name of the company applying for the permit.

(2) The sign shall be in place by the date of publication of the newspaper notice and shall remain in place and legible throughout the period of public comment.

(3) The sign placed at the site shall be located at or near the site's main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations, if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director shall approve the variations before signs are posted.

(f) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft permit.

(g) The draft permit may be changed based on comments.

(h) Bilingual public notice requirements of this subsection are applicable when either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs), or if either school received a waiver for a required bilingual education program under the provisions of 19 TAC §89.1205(g). Schools not governed by the provisions of 19 TAC §89.1205 shall not be considered in determining applicability of the requirements of this section. Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d), and are not otherwise affected by 19 TAC §89.1205(a), will not have to meet the requirements of subsection (a) of this section. If the notices required by this section and §116.1418 of this title are combined, the combined notice is subject to the requirements of this section. Each affected facility shall meet the following requirements.

(1) At the applicant's expense, an additional notice shall be published at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school received a waiver for the requirements of 19 TAC §89.1205(a) under 19 TAC §89.1205(g), the notice shall be published in the alternate languages in which the bilingual education program would have been taught had the school not received a waiver for the bilingual education program.

(2) Each notice under this subsection shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.

(3) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located.

(4) The requirements of this section are waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice.

(5) Notice under this subsection shall only be required to be published within the United States.

(6) If the alternate language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(7) Each alternate language publication shall follow the requirements of this section not otherwise inconsistent with this subsection.

(8) At the applicant's expense, an additional sign shall be posted at the site in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school received a waiver for the requirements of 19 TAC §89.1205(a) under 19 TAC §89.1205(g), the alternate language signs shall be posted in the alternate languages in which the bilingual education program would have been taught had the school not received a waiver for the bilingual education program.

(9) The alternate language signs shall be posted adjacent to each English language sign required in public notice.

(10) The alternate language signs shall meet all other requirements of this section.

§116.1422. General and Special Conditions.

(a) Permits issued under this subchapter may contain general and special conditions. The holders of a permit under this subchapter shall comply with any and all such conditions.

(b) Holders of permits issued under this subchapter shall comply with the following general conditions, regardless of whether they are specifically stated within the permit document.

(1) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(2) Startup notification.

(A) The permit holder shall notify the appropriate regional office of the commission, and any local air pollution control agencies having jurisdiction, prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow a representative of the commission and a representative of any local air pollution control agency having jurisdiction to be present at the commencement of operations.

(B) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(C) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the commission's Office of Permitting, Remediation, and Registration the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(3) Sampling requirements.

(A) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(B) All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission.

(C) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations, or contracting with an independent sampling consultant.

(4) Equivalency of methods. The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to using these methods in fulfilling any requirements of the permit.

(5) Recordkeeping. The permit holder shall:

(A) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(B) keep all required records in a file at the facility site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;

(C) make the records available at the request of the executive director or any local air pollution control agency having jurisdiction over the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner;

(D) comply with any additional recordkeeping requirements specified in special conditions attached to the permit;

(E) retain information in the file for at least two years following the date that the information or data is obtained; and

(F) for persons certifying and registering a federally enforceable emission limitation in accordance with §116.611 of this title (relating to Registration to Use a Standard Permit), retain all records demonstrating compliance for at least five years.

(6) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(7) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for emissions events and maintenance in accordance with Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities).

(8) Compliance with rules.

(A) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with Texas Health and Safety Code, Chapter 382, Texas Clean Air Act, and the conditions precedent to the granting of the permit.

(B) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(C) Acceptance includes consent of the executive director to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) Special conditions. The holders of permits issued under this subchapter shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of this title.

(2) Special conditions for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit in accordance with Subchapter F of this chapter (relating to Standard Permits); or

(ii) a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule).

(B) Written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review in accordance with:

(I) Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)); or

(II) the provisions in Subchapter B, Divisions 5 and 6 of this chapter (relating to Nonattainment Review and Prevention of Significant Deterioration Review).

§116.1424. Amendments and Alterations of Permits Issued Under This Subchapter.

The owner or operator planning the modification of a facility permitted under this subchapter must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for permits issued under this subchapter are subject to the requirements of Subchapter B of this chapter, except that the public notice and public participation requirements of this subchapter shall apply instead of any public notification or public comment procedures required by Subchapter B of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601524

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-5017

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CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §§330.1, 330.890 - 330.897, and 330.951 - 330.959. The commission also adopts the repeal of §§330.2 - 330.8, 330.10 - 330.15, 330.21 - 330.26, 330.31 - 330.34, 330.41, 330.50 - 330.66, 330.70 - 330.73, 330.75, 330.111 - 330.139, 330.150 - 330.159, 330.171, 330.200 - 330.206, 330.230, 330.231, 330.233 - 330.242, 330.250 - 330.256, 330.280 - 330.284, 330.300 - 330.305, 330.401 - 330.419, 330.561 - 330.569, 330.601 - 330.604, 330.641 - 330.643, 330.825 - 330.830, 330.960 - 330.963, and 330.1001 - 330.1010. The commission also adopts new §§330.3, 330.5, 330.7, 330.9, 330.11, 330.13, 330.15, 330.17, 330.19, 330.21, 330.23, 330.25, 330.53, 330.55, 330.57, 330.59, 330.61, 330.63, 330.65, 330.67, 330.69, 330.71, 330.73, 330.101, 330.103, 330.105, 330.107, 330.121, 330.123, 330.125, 330.127, 330.129, 330.131, 330.133, 330.135, 330.137, 330.139, 330.141, 330.143, 330.145, 330.147, 330.149, 330.151, 330.153, 330.155, 330.157, 330.159, 330.161, 330.163, 330.165, 330.167, 330.169, 330.171, 330.173, 330.175, 330.177, 330.179, 330.201, 330.203, 330.205, 330.207, 330.209, 330.211, 330.213, 330.215, 330.217, 330.219, 330.221, 330.223, 330.225, 330.227, 330.229, 330.231, 330.233, 330.235, 330.237, 330.239, 330.241, 330.243, 330.245, 330.247, 330.249, 330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277, 330.279, 330.281, 330.283, 330.285, 330.287, 330.289, 330.301, 330.303, 330.305, 330.307, 330.331, 330.333, 330.335, 330.337, 330.339, 330.341, 330.371, 330.401, 330.403, 330.405, 330.407, 330.409, 330.411, 330.413, 330.415, 330.417, 330.419, 330.421, 330.451, 330.453, 330.455, 330.457, 330.459, 330.461, 330.463, 330.465, 330.501, 330.503, 330.505, 330.507, 330.509, 330.541, 330.543, 330.545, 330.547, 330.549, 330.551, 330.553, 330.555, 330.557, 330.559, 330.561, 330.563, 330.601, 330.603, 330.605, 330.607, 330.609, 330.611, 330.613, 330.615, 330.631, 330.633, 330.635, 330.637, 330.639, 330.641, 330.643, 330.645, 330.647, 330.649, 330.671, 330.673, 330.675, 330.677, 330.960 - 330.964, 330.981, 330.983, 330.985, 330.987, 330.989, 330.991, 330.993, 330.995, 330.1201, 330.1203, 330.1205, 330.1207, 330.1209, 330.1211, 330.1213, 330.1215, 330.1217, 330.1219, and 330.1221.

The commission adopts §§330.1, 330.3, 330.5, 330.7, 330.9, 330.11, 330.13, 330.15, 330.19, 330.23, 330.25, 330.53, 330.57, 330.59, 330.61, 330.63, 330.69, 330.71, 330.73, 330.121, 330.125, 330.127, 330.129, 330.131, 330.133, 330.135, 330.141, 330.143, 330.145, 330.157, 330.161, 330.165, 330.169, 330.171, 330.173, 330.177, 330.201, 330.203, 330.205, 330.209, 330.213, 330.219, 330.225, 330.229, 330.233, 330.235, 330.245, 330.247, 330.261, 330.269, 330.281, 330.285, 330.301, 330.305, 330.337, 330.339, 330.401, 330.403, 330.407, 330.409, 330.411, 330.415, 330.417, 330.421, 330.451, 330.453, 330.455, 330.457, 330.503, 330.507, 330.543, 330.545, 330.603, 330.631, 330.633, 330.635, 330.639, 330.641, 330.643, 330.645, 330.647, 330.649, 330.951 - 330.957, 330.959 - 330.964, 330.981, 330.983, 330.985, 330.987, 330.989, 330.991, 330.1203, 330.1205, 330.1207, 330.1211, 330.1213, 330.1219, and 330.1221 *with changes* to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5545).

The commission adopts §§330.17, 330.21, 330.55, 330.65, 330.67, 330.101, 330.103, 330.105, 330.107, 330.123, 330.137, 330.139, 330.147, 330.149, 330.151, 330.153, 330.155, 330.159, 330.163, 330.167, 330.175, 330.179, 330.207, 330.211, 330.215, 330.217, 330.221, 330.223, 330.227, 330.231, 330.237, 330.239, 330.241, 330.243, 330.249,

330.263, 330.265, 330.267, 330.271, 330.273, 330.275, 330.277, 330.279, 330.283, 330.287, 330.289, 330.303, 330.307, 330.331, 330.333, 330.335, 330.341, 330.371, 330.405, 330.413, 330.419, 330.459, 330.461, 330.463, 330.465, 330.501, 330.505, 330.509, 330.541, 330.547, 330.549, 330.551, 330.553, 330.555, 330.557, 330.559, 330.561, 330.563, 330.601, 330.605, 330.607, 330.609, 330.611, 330.613, 330.615, 330.637, 330.671, 330.673, 330.675, 330.677, 330.890 - 330.897, 330.958, 330.993, 330.995, 330.1201, 330.1209, 330.1215, and 330.1217 *without changes* to the proposed text. These sections will not be republished. The commission also adopts the repeal of §§330.2 - 330.8, 330.10 - 330.15, 330.21 - 330.26, 330.31 - 330.34, 330.41, 330.50 - 330.66, 330.70 - 330.73, 330.75, 330.111 - 330.139, 330.150 - 330.159, 330.171, 330.200 - 330.206, 330.230, 330.231, 330.233 - 330.242, 330.250 - 330.256, 330.280 - 330.284, 330.300 - 330.305, 330.401 - 330.419, 330.561 - 330.569, 330.601 - 330.604, 330.641 - 330.643, 330.825 - 330.830, 330.960 - 330.963, and 330.1001 - 330.1010 *without changes*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission initiated this rulemaking to revise and update Chapter 330. The municipal solid waste (MSW) program has undergone extensive change over the past ten years. Previously, regulations were based on landfill facilities, with storage and processing requirements referencing these requirements as appropriate. New regulatory requirements have been continually added to the original rule structure. Enough change has occurred to justify revamping the MSW rules to a new organizational structure to more appropriately reflect current programs and requirements within the Municipal Solid Waste Permits Section. The commission has restructured the rules from a predominantly landfill basis to a more general solid waste management facility basis having multiple solid waste management unit types. All persons managing MSW will be subject to these rules, as discussed within specific subchapters. Each subchapter is organized by a topic relating to a particular aspect of MSW management. Where possible, extensive cross-referencing to other subchapters has been eliminated.

Also, the commission is adopting some streamlining initiatives such as eliminating unnecessary requirements, reducing commission approvals of low impact waste management activities, and reducing or combining reporting requirements while improving overall data quality submitted to the commission. Along with improving the organizational flow of MSW requirements, the commission has updated all relevant cross-references and citations.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes, from proposal, throughout the rules to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. These changes include spelling out acronyms, updating references to the TCEQ's predecessor agencies, and updating cross-references.

Additionally, the commission changes "applicant" to "owner or operator" throughout the rules. The commission adopts this change based on the requirements of 30 TAC §305.43(b), which states that for a solid waste permit application, the owner of a facility must submit an application, unless a facility is owned by one person and operated by another, in which case the operator must submit an application. The commission applies this change to permit and registration applications.

Further, the commission changes "site" to "facility" throughout the rules. The definition of "facility" is based on the definition of "solid waste facility" found in Texas Health and Safety Code (THSC), §361.003, Definitions.

The commission changes "MSWLF" to "MSW landfill" or "solid waste management unit" as appropriate throughout the rules. MSWLF is a term used in 40 Code of Federal Regulations (CFR) Part 258 for landfills that receive household waste. An MSWLF is also described in Chapter 330 as a Type I landfill. This change is necessary since requirements throughout Chapter 330 apply also to Type IV landfills and other solid waste management units in addition to landfills.

The commission refers to a landfill "cell" rather than a landfill "trench" throughout the rules to be consistent with the new definition for a landfill cell that includes a trench or pit.

The commission refers to "medical waste" rather than "special waste from health care-related facilities" throughout the rules to establish a nomenclature more consistent with federal requirements for regulated medical waste.

The commission repeals certain sections and either deletes the requirements contained in those sections or moves the requirements from the repealed sections to new sections to improve the organization of the requirements in the chapter and to improve readability. The reorganization of this chapter will remove redundancy in the requirements and gather similar requirements in the same section. Specific changes are noted in the following discussion regarding each section.

Finally, the commission adopts a comprehensive renumbering of sections in Chapter 330 to allow space for future rules, as necessary.

The commission amends §330.1 by changing the title to Purpose and Applicability to more appropriately reflect the contents of the section. The commission deletes the requirement for the owner or operator to comply with all other applicable state and federal rules or laws in §330.1(a) because these other rules and laws are beyond the enforcement authority of the TCEQ. The commission moves §330.3(a) to new §330.1(a). The commission revises §330.1(a) to state that this chapter covers aspects of MSW management, and air emissions from MSW landfill facilities and transfer stations. Cross-references to other subchapters from Subchapter A are reduced. The air requirements are located in new Subchapter U, Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations. The commission revises §330.1(a) to specify when changed portions of this chapter will be implemented. The commission amends §330.1 to state the general applicability provisions for existing permits, registrations, and other types of authorizations. Permits and registrations that existed before these rule revisions (2006 Revisions) are effective, generally remain valid except as expressly provided otherwise. Several of the revised subchapters include provisions that expressly supersede provisions contained in existing authorizations or require modifications to be made to existing authorizations. For new permits and major amendments to increase solid waste disposal capacity that are pending and administratively complete before the effective date of the 2006 Revisions, the owner or operator must submit the modifications required by the 2006 Revisions within one year after the commission's decision on the application has become

final and appealable, unless a longer period of time is specified in the rules. As to applications for permits and registrations that are pending upon the effective date of the revised rules, applications for new permits and major amendments to existing permits that are administratively complete and registration applications for which the executive director has completed a technical review shall be considered under the former rules unless the applicant elects otherwise. Authorizations, other than permits and registrations, that existed before the 2006 Revisions become effective shall generally comply with the 2006 Revisions within 120 days of the 2006 Revisions becoming effective. Applications for modifications or for amendments that do not increase solid waste disposal capacity that are filed within 180 days after the 2006 Revisions become effective, are subject to the former rules. A provision is adopted for medical waste mobile treatment units operating under an existing registration to transition to operate under a registration by rule.

The commission revises §330.1(b) to state that persons having a permit by rule (PBR) must seek separate authorizations to conduct other waste management activities at a facility. This provision will ensure that a person seeking to engage in waste management activities other than what is authorized by a PBR will obtain the proper authorizations. The commission adopts new §330.1(c), which clarifies the applicability of Subchapter A to sludge use, disposal, and transportation with respect to those requirements found in 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation. The commission adopts a new subsection (d) to clarify that only those persons whose MSW composting operations are subject to a permit are subject to new Subchapter B, Permit and Registration Application Procedures.

The commission repeals §330.2, Definitions, and moves the definitions from §330.2 to new §330.3.

The commission repeals §330.3, Applicability. The commission moves the requirements from §330.3(a) to new §330.1(a); from §330.3(b) - (d) to new §330.5(c) - (e); from §330.3(e) to new §330.5(b)(1) - (3); from §330.3(f) to new §330.63(d)(5); from §330.3(g) to new §330.5(b)(4) - (6); from §330.3(h) to new §330.5(a); and from §330.3(i) to new §330.5(b)(7).

The commission adopts new §330.3, Definitions, to include new definitions for the following terms: active disposal area; animal crematory; commence physical construction; contaminated water; grease trap waste; grit trap waste; landfill mining; low volume transfer station; new facility; notification; operating hours; process to further reduce pathogens; permitted landfill; physical construction; universal waste; waste acceptance hours; and white goods.

The commission adopts new §330.3 to include definitions for the following terms: ancillary equipment; boiler; Class 1 wastes; Class 2 wastes; Class 3 wastes; container; incinerator; infrared incinerator; injection well; land treatment unit; landfill; landfill cell; plasma arc incinerator; solid waste management unit; tank; and tank system. These definitions are derived from definitions in 30 TAC Chapter 335, Subchapter A, Industrial Solid Waste and Municipal Hazardous Waste.

The commission adopts new §330.3 to include revised definitions for the following terms: citizen collection station, to allow small quantities of commercial waste to be deposited in these stations for small communities where regular collection is not available; composite liner, to refer to geomembranes rather than flexible membranes and that the soil liner shall be recompacted soil deposited in lifts; contaminate, to be properly defined as a verb; generator, to include a person that produces solid waste to be shipped to any other person; household waste, to remove the redundant mention of yard waste since brush includes yard waste and brush is used within the definition of household waste, and to remove the condition that brush not contain household waste since this is a circular definition and the definition of brush is exclusive of household waste; industrial solid waste, to more closely follow the definition in Chapter 335, Subchapter A, Industrial Solid Waste and Municipal Solid Waste; inert material, to include items previously defined as man-made inert material and concrete with reinforcing steel; monofill, to refer to a landfill cell rather than a landfill trench; municipal solid waste landfill unit, to include vertical expansions; polychlorinated biphenyls, to follow the definition found in 40 CFR Part 761; population equivalent, to delete redundant portions within the definition; processing, to delete the references to hazardous waste; qualified groundwater scientist, to refer to a licensed geoscientist or a licensed engineer; registration, to relate to information submitted to the commission for review and approval; rubbish, to refer to brush and to delete metal furniture; seasonal high water table, to instead be a definition for a seasonal high water level; site operator, to refer to the holder of or applicant for an authorization rather than a permit; small municipal solid waste landfill, to implement House Bill 1609, 79th Legislature, to allow the receipt of an additional 20 tons per day of construction or demolition waste in a separate Type IVAE landfill unit located at a small MSW landfill facility; waste management unit boundary, to refer to the perimeter of the unit and not the hydraulically downgradient limit of the unit; and wetlands, to only refer to the definition in 30 TAC Chapter 307, Texas Surface Water Quality Standards.

The commission adopts new §330.3 to include a revised definition for medical waste. The revised definition refers to treated and untreated special waste from health care-related facilities and refers to the sources specified in 25 TAC §1.134, adds the definition of regulated medical waste as defined by 49 CFR §173.134(a)(5), and establishes that single or multi-family dwellings, hotels, motels, or other establishments that provide lodging and related services for the public are not health care-related facilities. Health care-related facilities are specified in §1.134 as including ambulatory surgical centers; abortion clinics and birthing centers; blood banks and blood drawing centers; clinics, including, but not limited to, medical, dental, and veterinary; clinical, diagnostic, pathological, or biomedical research laboratories; educational institution health centers; educational institution research laboratories; electrolysis facilities; emergency medical services; end stage renal dialysis facilities; funeral establishments; home and community support services agencies; hospitals; long-term care facilities; mental health and mental retardation facilities, including, but not limited to, hospitals, schools, and community centers; minor emergency centers; occupational health clinics and clinical laboratories; pharmacies; pharmaceutical manufacturing plants and research laboratories; professional offices, including, but not limited to, the offices of physicians, dentists, and acupuncturists; special residential care facilities; tattoo studios; and veterinary clinical and research laboratories.

The commission adopts a revised definition for special waste, to include untreated medical waste, soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram (mg/kg) total petroleum hydrocarbons, or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of 30 TAC §335.521(a)(1), and to exclude contaminated soil below

these levels. The commission deletes light ballasts and small capacitors containing polychlorinated biphenyl compounds from the previous definition of special waste in §330.2(137)(O), and deletes any waste stream other than household or commercial garbage, refuse, or rubbish from the previous definition in §330.2(137)(R) for special waste.

The commission adopts a revised definition for storage, to include keeping, accumulating, or aggregating solid waste for a temporary period.

The commission excludes the following definitions from §330.2 in new §330.3: CFR; Class 1 industrial solid waste; industrial hazardous waste; man-made inert material; MSWLF; municipal solid waste site; navigable waters; new MSWLF unit; opposed case; other regulated medical waste; relevant point of compliance; shall; should; special waste from health care-related facilities; store; SWDA; TACB; Texas Civil Statutes; TWC; unconfined water; and unit. These terms are outdated, are no longer used in this chapter, or are unnecessary.

The commission deletes the following definitions from §330.2 because these terms are defined in 30 TAC §3.2, Definitions: commission; EPA; executive director; permit; and person.

The commission excludes definitions for acid and lead in new §330.3 because these words are in common and normal usage and need not be specifically defined within this chapter.

The commission repeals §330.4, Permit Required. The commission moves the following requirements from this section to the following new sections: §330.4(a) and (b) to new §330.7(a); §330.4(c) to new §330.11(d); §330.4(d) to new §330.9(b); §330.4(f)(1)(A) and (B), §330.4(j), the first three sentences of §330.4(r), and §330.4(aa) to new §330.11(e); §330.4(f)(1)(D) to new §330.13(g); §330.4(g) to new §330.9(c); §330.4(h) to new §330.9(d); §330.4(i) to new §330.11(f); §330.4(j) to new §330.11(e)(3); §330.4(k) to new §330.9(e); §330.4(l) to new §330.11(f); §330.4(m) to new §330.73(a); §330.4(p) to new §330.13(h); §330.4(q) to new §330.9(f); §330.4(r) to new §330.7(b); §330.4(s) to new §330.9(g); §330.4(t) and §330.72(h) to new §330.9(h); §330.4(u) to new §330.9(i); §330.4(v) to new §330.13(a); §330.4(w) to new §330.13(b); §330.4(x) to new §330.7(d); §330.4(y) to new §330.13(c); §330.4(z) to §330.7(e); and §330.4(aa) to §330.11(e). The commission deletes §330.4(f)(2) since soil, dirt, rock, sand, or other natural or man-made inert materials used to fill the land to make the land suitable for construction of surface improvements is not a solid waste as defined in new §330.3 and is therefore not subject to the requirements of Chapter 330.

Additionally, as a streamlining initiative for low-impact waste management activities, the commission replaces the registration requirement of §330.4(n) for Type IX facilities that recover landfill gas for beneficial use with a registration by rule in new §330.9(k).

The commission repeals §330.5, General Prohibitions, and moves the requirements of this section to new §330.15.

The commission adopts new §330.5, Classification of Municipal Solid Waste Facilities. The commission moves the requirements from §330.3(h) and §330.41 to new §330.5(a); from §330.3(e) and (g) to new §330.5(b) and changed "facility unit" to "facility" so that the waste acceptance rate applies to the entire facility for all waste types to be received at the facility; from §330.3(b) - (d) to new §330.5(c) - (e); and from §330.3(i) to new §330.5(b)(7). The commission corrects references in §330.5(a)(2) to more appropriately exclude a Type IVAE landfill from the liner and groundwater monitoring requirements of Subchapters H and J, respectively. Although a Type IAE landfill unit can generally accept the same types of waste as a Type I landfill unit, Type IAE landfill units are restricted from disposing of most types of Class I industrial solid waste under §330.173(a). The commission classifies landfill mining as a Type IX facility, consistent with material recovery operations. The commission adopts new §330.5(b)(1)(A) to implement House Bill 1609, 79th Legislature, by updating the description of the amount of waste that can be accepted by a small MSW landfill arid exempt facility. New §330.5(b)(2) provides for the transition from the existing 20 tons per day disposal limit to the new 40-ton limit when separate Type IAE and Type IVAE units are located at the same small MSW landfill facility.

The commission repeals §330.6, Technical Guidelines, and moves the requirements of this section to new §330.17.

The commission repeals §330.7, Deed Recordation, and moves the requirements of this section to new §330.19.

The commission adopts new §330.7, Permit Required, to specify only those MSW management activities that must be permitted by the commission. The commission moves the requirements from §330.4(a) and (b) to new §330.7(a), §330.4(r) to new §330.7(b), and §330.4(x) to new §330.7(d). In subsection (a), the commission added the term "generator" to the list of entities against which the executive director may take recourse if these rules are violated. The commission has added the term "generator" to ensure that generators properly characterize their waste and send it to appropriately authorized facilities. Additionally, the commission adopts new §330.7(c) concerning PBRs for persons that compact or transport waste in enclosed containers destined for a Type IV facility. The commission combines the separate special municipal route permits and transporter route special permits into an annual PBR for special collection routes. The commission establishes that a transporter need only claim a single PBR for all of its vehicles and pay a $100 per vehicle fee. The commission moves the requirements from §330.25 and §330.32(f) to new §330.7(c) and modifies the formatting and language in the new subsection to meet current rule writing standards.

The commission moves the PBR requirements of §330.4(z) and §330.75 for animal crematories to new §330.7(e) with two changes. To remove inconsistencies between the solid waste and air permitting programs, the commission removes the feed limitation of 1,600 pounds per day specified in §330.75(b)(1) and instead adopts new §330.7(e)(2), which refers to the feed limitations specified for these types of incinerators in 30 TAC §106.494. Also, the commission removes the operating hours specified in §330.75(b)(11) and instead adopts new §330.7(e)(12), which refers to 30 TAC §111.149. These changes will allow for greater flexibility in the operation of animal crematories.

The commission adopts solid waste PBRs in new §330.7(f) for dual-chamber incinerators if the owner or operator complies with 30 TAC §106.491, Dual-Chamber Incinerators, and new §330.7(g) for air curtain incinerators if the owner or operator complies with 30 TAC §106.496, Air Curtain Incinerators. The commission adopts new PBRs for dual-chamber incinerators and air curtain incinerators to establish consistency with the current authorizations for these activities in 30 TAC Chapter 106. An MSW PBR for dual-chamber incinerators is currently authorized in §106.491(d)(2) and is included in new §330.7(f). Air curtain incinerators are currently authorized in §106.496,

but are currently required by §106.496(g)(4)(i) to have separate authorization from the executive director at landfills. As a streamlining initiative, the commission adopts new §330.7(g) to eliminate the need for a separate authorization from the executive director at MSW facilities.

The commission also adopts an air PBR in new §330.7(h) for air emissions at MSW landfill facilities if the owner or operator complies with new Subchapter U, Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations.

The commission repeals §330.8, Notification Requirements, and moves the requirements of this section with changes to new §330.11, Notification Required.

The commission adopts new §330.9, Registration Required, to list all MSW management activities that are exempt from permitting requirements but that still require commission approval by registration. To promote communication and coordination with TCEQ's regional offices, the commission requires in new §330.9(a) that a person shall submit a claim for a registration by rule in duplicate with one copy sent directly to the TCEQ's regional office. The commission moves the requirements from §330.73(b)(1) and (c)(1) to new §330.9(a); §330.4(d) to new §330.9(b); §330.4(g) to new §330.9(c); §330.4(h) to new §330.9(d); §330.4(k) to new §330.9(e); §330.4(q) to new §330.9(f); §330.4(s) to new §330.9(g); §330.4(t) and §330.72(h) to new §330.9(h); §330.4(u) to new §330.9(i); and §330.402 to new §330.9(j). The commission adopts new §330.9(h)(5) to state that transporters who only adjust septage pH during transportation are not subject to the registration requirement of §330.9(h), but must instead register under §312.142. The commission adopts this provision to provide clarity about which rules apply to transporters who adjust septage pH during transportation.

The commission adopts a solid waste registration by rule for Type IX facilities that recover landfill gas for beneficial use. New §330.9(k) replaces §330.4(n) and §330.70. Since owners or operators of such facilities must receive separate commission authorizations for air emissions from these facilities, the commission adopts the Type IX facility registration by rule to streamline the authorization process for these low-impact waste management activities.

The commission adopts a solid waste registration by rule for transporters of untreated medical waste that are not the generator. The commission adopts this solid waste registration by rule to streamline the authorization process for low-impact waste management activities. The commission replaces §330.1005(b) with new §330.9(l). Drivers' names and license numbers are no longer required as part of the registration by rule. The commission deletes this requirement since this information does not impact whether the vehicle meets the requirements in this chapter. Since the registrations expire on an annual basis, the commission intends to transition these authorizations from a registration to a registration by rule upon expiration of the registration.

The commission adopts a solid waste registration by rule for owners or operators of mobile treatment units conducting on-site treatment of medical waste that are not the generator. The commission replaces §330.1010(b), (d), and (e) with new §330.9(m). The commission adopts the solid waste registration by rule to streamline the authorization process. The commission eliminates the requirement for drivers' names and license numbers as part of the registration by rule since this information does not impact whether the mobile treatment unit meets the requirements in this chapter. The commission adopts new §330.9(m)(1)(E) - (H) to require owners or operators of mobile treatment units to provide the chemical preparations that will be used as part of the treatment process, evidence of competency, a description of the management and disposal of process waters generated during treatment events, and a written contingency plan to describe how waste will be managed in the event of equipment breakdown. This additional information is necessary to ensure that all waste and treatment residues will be properly treated. The commission adopts new §330.9(m)(1)(i) to require owners or operators of medical waste mobile treatment units to provide evidence of financial assurance using procedures specified in Subchapter L of this chapter and 30 TAC Chapter 37, Subchapter R, Financial Assurance for Municipal Solid Waste Facilities, to ensure that money is available to provide for the removal of all waste and waste residues if the owner or operator abandons the medical waste mobile treatment unit. A cost estimate of the cost to remove and dispose of waste and disinfect the waste treatment equipment shall be submitted prior to initiating operation or in conjunction with the transition from operating under a registration to operating under the new registration by rule. The commission changes an incorrect rule reference in new §330.9(m)(4) to refer to the annual fees enumerated in §330.1221(l). The commission extends the requirement to notify the executive director of changes to the registration in new §330.9(m)(6) from 15 days to 30 days to allow additional reporting flexibility. Since the registrations under the former rules expire on an annual basis, the commission intends to transition these authorizations from a registration to a registration by rule upon expiration of each registration.

To reduce the level of agency approvals of low-impact waste management activities and to facilitate treatment of medical waste throughout Texas, the commission adopts new §330.9(n) to allow the registration of facilities that will store or process untreated medical waste that is received from off-site sources, as described in new §330.1205(b).

The commission will now require a solid waste registration for owners or operators of new liquid waste transfer facilities that receive 32,000 gallons per day (gal/day) or less or will be located on, or at, other commission authorized facilities. These facilities had been authorized through a notification, but the commission believes that these facilities are best evaluated through the registration process. All existing liquid waste transfer facilities will be allowed to continue operation as a notification to the commission. The commission replaces §330.4(r) and §330.66(a)(1) with new §330.9(o) for new liquid waste transfer facilities that receive 32,000 gal/day or less and new §330.11(e)(4) for existing facilities. The commission replaces §330.66(a)(7) with new §330.9(p) for new liquid waste transfer facilities located on, or at, other commission authorized facilities and new §330.11(e)(7) for existing facilities.

The commission repeals §330.10, Closure, and moves the requirements of this section to new §330.21.

The commission repeals §330.11, Relationships with Other Governmental Entities. The commission moves the requirements of §330.11(a) to new Subchapter U, and §330.11(b) - (i) to new §330.23(a) - (h).

The commission adopts new §330.11, Notification Required, to clarify those persons that do not need commission approval for certain MSW management activities but who still must notify the commission before starting MSW management activity at a location or property. The notification is a one-time requirement

for the type of initial waste management activity to occur at a location or property and does not need to be renewed or repeated. The person must notify the commission 90 days prior to conducting the initial waste management activity to allow the TCEQ staff time to provide compliance assistance, to investigate whether the activity is exempt from permitting and registration requirements, and to provide any appropriate technical recommendations regarding prudent management of the waste. Conversely, requiring notification 90 days prior to engaging in the initial waste management activity allows TCEQ staff to advise the notifier if the activity is subject to permitting or registration requirements and to prevent unauthorized management of MSW. After the initial notification, persons have the continuing obligation to provide prompt notification of any changes or additional waste management activities at a location or property. These subsequent one-time notifications allow the TCEQ staff to provide technical recommendations or to evaluate if the activity is subject to permitting or registration. To promote communication and coordination with TCEQ's regional offices, the commission adopts new §330.11(a) to require a person to submit a notification in duplicate with one copy sent directly to the TCEQ's regional office. Requirements from §330.8(a) - (c) are in new §330.11(a) - (c). The commission moves requirements from §330.4(c) to new §330.11(d); §330.4(f)(1)(A) and (B), (j), the first three sentences of (r) and (aa), and §330.66(a)(5) and (7) and (c) to new §330.11(e); §330.4(i) and (l) to new §330.11(f); and §330.1005(p)(2) to new §330.11(h). The commission adds subsection (f) to state that generators conducting processing of medical waste on site, as defined by new §330.1205(b), need only notify the executive director of the activity. The commission adds subsection (g) to authorize low volume transfer stations as a notification to the commission provided that all local county approvals are granted and the adjacent landowners have been notified of the activity. The commission adds requirements in §330.11 and in provisions throughout the chapter to provide that local pollution agencies with jurisdiction that have statutory authority to enforce environmental laws and rules should also be notified when notice is required to be provided to the executive director. These notification and reporting requirements should apply to those local entities who specifically make a request to the TCEQ that they would like to be included in the notification and reporting requirements for facilities in a specific county.

The commission repeals §330.12, Relationship with County Licensing System, and moves the requirements of this section to new §330.25.

The commission repeals §330.13, Severability, as part of the effort to repeal obsolete or unnecessary rule provisions and to conform the chapter with the TCEQ's current rule writing guidelines. Although the commission previously included severability clauses in rule chapters, the commission no longer follows this practice.

The commission adopts new §330.13, Waste Management Activities Exempt from Permitting, Registration, or Notification, for those persons whose waste management activities are exempt from the permitting, registration, and notification requirements of this chapter but who must still comply with certain requirements such as the prevention of nuisance conditions and deed recordation. The commission moves requirements from §330.4(v) to new §330.13(a) and removes the deed recordation requirement for individuals who dispose up to 2,000 pounds per year of litter or waste on their own land for non-commercial, non-industrial purposes. The requirements of new §330.13(b) and (c) are from §330.4(w) and (y), respectively. New §330.13(d) specifies that generators storing medical waste "on-site," as defined by new §330.1205(b), are not subject to permit, registration, or notification requirements. The commission believes that health care-related facilities have the necessary expertise to store waste appropriately and does not believe that requiring a permit, registration, or notification will serve a useful purpose. Based on §330.1005(p)(1), new §330.13(e) is added to specify that a permit, registration, notification, or other authorization is not required for generators who generate less than 50 pounds per month of medical waste and who transport their own untreated waste. The commission adds §330.13(f) to state that, except as required by §330.7(c)(2) and (3), §330.9(l), and §330.11(h), transporters of MSW do not require a permit, registration, or notification. The commission moves the requirements of §330.4(f)(1)(D) to new §330.13(g); and §330.4(p) to new §330.13(h).

The commission repeals §330.14, Arid Exemption Process, and moves the requirements of this section to new §330.63(d)(5) and (e)(6).

The commission repeals §330.15, Effective Date, and moves the requirements of this section to new §330.1.

The commission adopts new §330.15, General Prohibitions. The commission moves requirements from §330.5 to new §330.15; and §§330.66(e), 330.71(b), 330.72(h), 330.73(f), 330.75(a), 330.403(1) - (6), and 330.409(5) to new §330.15(a). The commission adopts §330.15(e)(4) to allow whole or scrapped tires to be disposed if processed in an approved, secure manner before disposal. As allowed by THSC, §361.112, the commission may grant an exception to the disposal ban of whole tires if the commission finds that circumstances warrant the exception. The commission adopts this provision to recognize that new technologies may be developed that will provide for whole tires to be securely disposed of in a landfill. New §330.15(e)(5) modifies the requirements regarding items containing chlorinated fluorocarbon to conform this section to the changes made to new §330.147(c) in the site operating plan rules, which were effective December 2, 2004. The commission revises the rule by adding new §330.15(e)(9) to include radioactive materials, as defined in 30 TAC Chapter 336, as being prohibited from disposal in MSW facilities except as authorized in Chapter 336 of this title or that is subject to an exemption of the Texas Department of State Health Services (DSHS). The commission moves requirements from §330.55(b)(1) and §330.403(1) - (6) to new §330.15(h).

The commission adopts new §330.17, Technical Guidelines. The commission moves the first sentence from §330.6 to this section and specifies that guidelines are suggestions only.

The commission adopts new §330.19, Deed Recordation. The commission moves the requirements from §330.7 to this section. These requirements are revised related to discovery of buried waste, and the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.21, Applicability, to avoid redundancy with §330.1.

The commission adopts new §330.21, Closure. The commission moves the requirements from §330.10 to this section, to add a new subsection (a), and to modify subsection (b). New §330.21(a) specifies that persons exempt from permitting, registration, and notification requirements are not subject to closure

requirements. The commission adopts this provision to clarify that closure requirements are not applicable to exempt waste management activities. Additionally, this section allows a person to meet the closure requirements of this chapter by meeting the remedy standards in 30 TAC Chapter 350, Texas Risk Reduction Program, to provide additional flexibility regarding closure standards. The commission modifies the requirement in §330.21(b) by requiring a person that is registered under §330.9 to follow the closure requirements of the registration and this section.

The commission repeals §330.22, Storage Requirements, and moves the requirements of this section to new §330.209 without substantive changes.

The commission repeals §330.23, Approved Containers, and moves the requirements of this section to new §330.211 without substantive changes.

The commission adopts new §330.23, Relationships with Other Governmental Entities, and moves the requirements from §330.11(b) - (i) to this section. These requirements are moved without substantive changes; however, the statutory references were updated and the formatting and the rule language has been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.24, Citizen's Collection Stations, and moves the requirements of this section to new §330.213 without substantive changes.

The commission repeals §330.25, Requirements for Stationary Compactors, and moves the requirements of this section to new §330.7(c)(1) and §330.215. As a streamlining initiative, the commission deletes the requirement of §330.25(c)(3) for the transporter to provide the Type IV landfill operator with a trip ticket of a waste load from a stationary compactor. The operator of a stationary compactor must certify, in accordance with new §330.7(c)(1)(A)(vii) that the contents of the compactor are free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

The commission adopts new §330.25, Relationship with County Licensing System. The commission moves the requirements from §330.12 to this section and adopts new §330.25(b)(1)(A) applicable to MSW facilities subject to a permitting requirement as well as new §330.25(b)(1)(B) for all other MSW facilities. The commission anticipates that new §330.25(b)(1)(B) will encourage more counties to authorize lower priority MSW facilities using local authority. The commission moves §330.12(b)(1)(B) - (E) to new §330.25(b)(1)(C) - (F). The commission adopts new §330.25(c), which more closely follows the statutory language of THSC, §361.154, regarding County Licensing Authority.

The commission repeals §330.26, Storage of Litter and Other Waste, and moves this requirement to new §330.209.

The commission repeals §330.31, Applicability, and moves the requirements of this section to §330.101.

The commission repeals §330.32, Collection and Transportation Requirements, and moves the requirements of §330.32(a) - (e) to new §330.103; and §330.32(f) - (h) to new §330.7(c)(2) and (3).

The commission repeals §330.33, Collection Vehicles and Equipment, and moves the requirements of this section to new §330.105.

The commission repeals §330.34, Collection Spillage, and moves the requirements of this section to new §330.107.

The commission repeals §330.41, Types of Municipal Solid Waste Sites, and moves the requirements of this section to new §330.5(b).

The commission adds "and registration" after each instance that "permit" appears throughout new Subchapter B.

The commission repeals §330.50, Pre-application Review, and moves the requirements of this section to new §330.53.

The commission repeals §330.51, Permit Application for Municipal Solid Waste Facilities. The commission moves the requirements of §330.51(a) to new §330.57(a) and §330.57(c); §330.51(b)(1) and (2) to new §330.57(d); §330.51(b)(3) to new §330.61(a); §330.51(b)(4) to new §330.63(b)(2)(D); §330.51(b)(5) and (6)(A) to new §330.61(k)(3) and (4); §330.51(b)(6)(B) and (C) to new §330.61(i)(4) and (5); §330.51(b)(7) to new §330.61(m)(2); §330.51(b)(8) to new §330.61(n)(2); §330.51(b)(9) to new §330.61(o); §330.51(b)(10) to new §330.61(p); §330.51(c) - (f) to new §330.57(e) - (h).

The commission repeals §330.52, Technical Requirements of Part I of the Application, and moves the requirements of §330.52(a)(1), (3), and (4) to new §330.59(a); §330.52(a)(2) to new §330.53(c)(1); §330.52(b)(1) - (3) to new §330.57(g); §330.52(b)(4)(A) to new §330.61(c); §330.52(b)(4)(B) and (D) and §330.52(b)(5) to new §330.59(c); §330.52(b)(4)(C) to new §330.61(e); §330.52(b)(6) - (9) to new §330.59(d) - (f); §330.52(b)(10)(A) to new §330.59(g); and §330.52(b)(11) to new §330.63(j). The commission deletes the requirement for an applicant to appoint an engineer in §330.52(b)(10)(B); however, new §330.57(f) still requires plans and specifications be signed and sealed by a currently licensed professional engineer.

The commission repeals §330.53, Technical Requirements of Part II of the Application. The commission moves the requirements of §330.53(a) to new §330.57(c); §330.53(b)(1) - (3) to new §330.57(g); §330.53(b)(4) to new §330.61(a); §330.53(b)(5) to new §330.61(c); §330.53(b)(6) - (11) to new §330.61(f) - (k); §330.53(b)(12) and §330.53(b)(13)(B) and (C) to new §330.61(m) and (n); and §330.53(b)(13)(A) to new §330.551(b).

The commission adopts new §330.53, Pre-application Review. The commission moves the requirements from §330.50 to this section. These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission moves requirements from §330.52(a)(2) to new §330.53(c)(1) without substantive changes.

The commission repeals §330.54, Technical Requirements of Part III of the Application, and moves the requirements of §330.54(1) and (2) to new §330.57(g); §330.54(3) to new §330.61(b); and §330.54(4) to new §330.63.

The commission repeals §330.55, Site Development Plan. The commission moves the requirements of §330.55(a)(1) to new §330.63(d)(4)(B); §330.55(a)(2) to new §330.153(a); §330.55(a)(3) to new §330.63(b)(1); §330.55(a)(4) to new §330.63(d)(4)(D); §330.55(b)(1) to new §330.15(h); §330.55(b)(2) and (3) to new §330.305(b) and (c); §330.55(b)(4) - (6) to new §330.305(e) - (g); §330.55(b)(7) to new §330.307(a)

and (b); §330.55(b)(8) to new §330.305(d); §330.55(b)(9) to new §330.63(b)(5); and §330.55(b)(10) to new §330.143(b).

The commission adopts new §330.55, Other Authorizations. This section states that other agency authorizations relating to air emissions and storm water and wastewater management may be necessary in addition to those required in this chapter. Air requirements for MSW facilities are in new Subchapter U, Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations. The commission moves requirements from §330.59(b)(4) to new §330.55(a); and from §330.59(b)(3) to new §330.55(b).

The commission repeals §330.56, Attachments to the Site Development Plan. The commission moves the requirements of §330.56(a) to new §330.61(d); §330.56(b) to new §330.63(d)(4)(E) and (F); §330.56(d) to new §330.63(e); §330.56(e)(3) and (8) to new §330.63(f); §330.56(f) to new §§330.301 - 330.307; §330.56(g) to new §330.457(e)(5); §330.56(h) to new §330.63(j); §330.56(j) to new §330.63(d)(3)(C) and §330.63(d)(4)(G); §330.56(k) to new §330.63(f); §330.56(l) to new §330.63(h); §330.56(m) to new §330.63(i); §330.56(n) to new §330.371; §330.56(o) to new §§330.65(c), 330.177, 330.207, and 330.333.

The commission repeals §330.57, Technical Requirements of Part IV of the Application, and moves the requirements of this section to new §330.65.

The commission adopts new §330.57, Permit and Registration Applications for Municipal Solid Waste Facilities. The commission moves the requirements from §§330.71(e), 330.72(f), 330.73(d), and 330.956(d) - (g) to this section. These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission moves these requirements to eliminate redundancy in the rules and consolidate these requirements into one section. The commission moves requirements from §330.51(a) and §330.61 to new §330.57(a); §330.60 and §330.65(d) to new §330.57(b); §330.51(a) and §330.53(a) to new §330.57(c); §330.51(b)(1) and (2) and §330.416(e) to new §330.57(d); §330.51(d) and §330.416(h)(1) to new §330.57(f); §§330.51(e), 330.52(b), 330.53(b)(1) - (3), 330.54(1) and (2), 330.64(b), 330.416(a) and (b), 330.416(h)(2), and 330.416(j) to new §330.57(g); and §§330.51(f), 330.415(c), and 330.416(i) to new §330.57(h). These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, to conform with Texas Register requirements and agency guidelines. The commission moves these requirements to one section since the requirements are all related to the format of an application for a permit or a registration. Consolidating these requirements into one section will make it easier for the applicant to know how to format an application for a permit or a registration. The commission has specified in §330.57(a) reduced application information requirements for the geology report as appropriate for small MSW landfills seeking the arid exemption from groundwater monitoring and liner requirements. The commission adds §330.57(e)(2) to require that the owner or operator furnish Parts I and II of the application to the regional council of governments (COG). This will help the COG in its review of the application. In §330.57(f), the commission will allow a professional geoscientist to sign and seal applicable portions of the application. Additionally, the commission adds a reference to 30 TAC Chapter 281 in §330.57(c) to clarify that there are additional application requirements that an owner or operator must follow. To promote public access to applications, the commission adopts new §330.57(i) to require the owner or operator to provide a complete copy of any application that requires public notice, except for authorizations at Type IAE and Type IVAE landfill facilities, on a publicly accessible Web site. The commission will provide the identity of all owners and operators filing an MSW application on the commission's Web site with a link to the Web site where the application is posted.

The commission repeals §330.58, Technical Requirements of Part V of the Application. The commission moves the requirement to maintain the approved application and as-built construction plans and specifications on site and available for inspection to new §330.125(a) and §330.219(a). As a streamlining initiative, the commission removes the requirement that as-built construction plans and specifications be submitted to the executive director.

The commission repeals §330.59, Additional Technical Requirements of the Application for Solid Waste Processing and Experimental Sites (Types V and VI). The commission moves the requirements from §330.59(b) and §330.59(d)(4) to new §330.63(b); §330.59(d)(1) to new §330.203(a); §330.59(d)(2) to new §330.205(a); §330.59(d)(3) to new §330.65(d); and §330.59(d)(5) to new §§330.201 - 330.247.

The commission adopts new §330.59, Contents of Part I of the Application. The commission moves the requirements of §330.52(a)(1) to new §330.59(a)(1); §330.52(a)(3) and (4) to new §330.59(a)(2) and (3); §330.52(b)(4)(A) to new §330.59(c)(1); §330.52(b)(4)(B) to new §330.59(c)(2); §330.52(b)(4)(D) to new §330.59(c)(3)(A); §330.52(b)(5) to new §330.59(c)(3)(B); §330.52(b)(6) and (7) to new §330.59(d); §330.52(b)(8) to new §330.59(e); §330.52(b)(9) and §330.60(b)(2) to new §330.59(f); §330.52(b)(10)(A) to new §330.59(g); and §330.954(a)(7) to new §330.59(h)(2). The commission adopts new §330.59(c)(3)(B) to require the owner or operator to submit the adjacent and potentially affected landowners list and mineral interest owners list in electronic form, as allowed by 30 TAC §39.5(b), General Provisions. The commission requires in new §330.59(c)(3)(B) that the owner or operator provide a list of all mineral interest owners under the facility in order for those owners to receive notice of applications. Section 330.59(c)(3)(B) requires that property owner and mineral interest owner information be derived from real property appraisal records. The commission adds a new §330.59(h)(1) to charge a $150 application fee for permits, registrations, amendments, modifications, and temporary authorizations as allowed by 30 TAC §305.53. The remainder of the requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.60, Technical Requirements of an Application for Registration of Solid Waste Facilities (Type V and Type VI). The commission moves requirements from §330.60(a) to new §330.57(b); §330.60(b)(1) to new §330.63(j); and §330.60(b)(2) to new §330.59(f).

The commission repeals §330.61, Land-Use Public Hearing, and moves the requirements of this section to new §330.57(a).

The commission adopts new §330.61, Contents of Part II of the Application. The commission moves the requirements of §§330.51(b)(3), 330.53(b)(4), and 330.416(e)(3) to new §330.61(a); §§330.54(3), 330.65(d)(4)(C), 330.71(e)(4)(B), 330.72(f)(4)(B), and 330.73(d)(3)(B) to new §330.61(b); §330.52(b)(4)(A) and §330.53(b)(5) to new §330.61(c); §330.56(a) and §330.416(m)(1)(H) to new §330.61(d); §330.52(b)(4)(C) to new §330.61(e); §330.416(k) to new §330.61(h); §330.416(l) to new §330.61(i); §330.51(b)(6)(B) and (C) to new §330.61(i)(4) and (5); §330.53(b)(6) - (11) to new §330.61(f) - (k); §330.51(b)(5) and (6)(A) to new §330.61(k)(3) and (4); §330.131 to new §330.61(l); §330.53(b)(12) and §330.53(13)(B) and (C) to new §330.61(m) and (n); §330.51(b)(7) to new §330.61(m)(2); §330.51(b)(8) to new §330.61(n)(2); and §330.51(b)(9) and (10) to new §330.61(o) and (p). These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission adds a new requirement in §330.61(b)(1) that the waste acceptance plan required by new §330.203(a) be included in Part II of an application. The commission adds a new requirement in §330.61(h)(4) that allows population density and proximity to residences and other uses to be considered in the assessment of compatibility. This will allow unincorporated areas to be considered during the assessment. The commission also adds a new requirement in §330.61(h)(5) that well density may be considered for assessment of compatibility. New §330.61(p) requires the owner or operator to document a request for the regional COG and any local government, as appropriate, to review the application for compliance with regional and local solid waste plans.

The commission repeals §330.62, Property Rights, and moves, with the exception relating to subsection (c), the requirements of this section to new §330.67. The commission deletes the requirement in subsection (c) that lease agreements must contain specific provisions delineating mineral rights attached to the property and the rights to any recoverable material that may be buried on the property or landfill gases that may be produced. The commission deletes this requirement to conform the chapter with recent commission decisions regarding the commission's jurisdiction over mineral rights issues. The owner or operator is obligated to show only that all necessary surface rights, including surface access, have been acquired.

The commission repeals §330.63, Duration and Limits of Permits, and moves the requirements of this section to new §330.71. These conditions are also in 30 TAC Chapter 305, Consolidated Permits. The requirement of §330.63(a) is in §305.66 and §305.127(1)(B)(ii); §330.63(b) is in §305.63(a) and §305.127(1)(F); §330.63(c) is in §305.64; and §330.63(d) is in §305.45(b) and §305.64.

The commission adopts new §330.63, Contents of Part III of the Application. The commission moves the surface water drainage requirements of §330.409(1) and §330.416(m)(1)(D) to new §330.63(c); §330.55(b)(5)(C) and (D) and §330.56(f) to new §330.63(c)(1); and §§330.51(b)(4), 330.408(1), and 330.409(1) to new §330.63(c)(2)(D). To simplify applications appropriate to the waste management activity, the commission establishes that only applications for landfill and compost units include a surface water drainage report that includes all the analysis required by new §330.63(c). Other MSW unit types will generally not change major surface water drainage patterns and will not need a before and after surface water drainage comparison. The commission moves the requirements of §330.56(d) to new §330.63(e). The commission establishes that this application requirement for a geologic characterization be applicable to landfills, compost facilities, and any other application the executive director determines should have a geologic characterization. The commission has specified in §330.57(a) reduced application information requirements of the geology report as appropriate for small MSW landfills seeking the arid exemption from groundwater monitoring and liner requirements. Other MSW unit types having proper containment structures and waste management practices that will guard against subsurface contamination will generally not need a geologic characterization. The commission adopts new §330.63(e)(4)(B) to expand the property size in Table of Borings from 100 to 600 acres and the corresponding number of borings necessary to properly characterize the property. The commission moves the requirements of §§330.59(b), 330.59(d)(4), and 330.71(e)(5) to new §330.63(b); §330.55(a)(3) to §330.63(b)(1); §330.55(b)(9) to new §330.63(b)(5); §330.71(e)(5) to new §330.63(d); §330.55(a)(1) to new §330.63(d)(4)(B); §330.55(a)(4) to new §330.63(d)(4)(D); §330.56(b) to new §330.63(d)(4)(E) and (F); §330.72(c)(4) to new §330.63(d)(6)(B); §330.416(m)(1)(E), (G)(i), and (I) to new §330.63(d)(6); §330.73(b)(2), (4), and (5), and (i) to new §330.63(d)(8); §330.56(d) and §330.416(m)(1)(F) to new §330.63(e); §330.3(f) and §330.14 to new §330.63(d)(5) and §330.63(e)(6); §330.56(e)(3) - (8) and §330.56(k) to new §330.63(f); §§330.52(b)(11), 330.56(h), and 330.60(b)(1) to new §330.63(j); §330.56(j) to new §330.63(d)(3)(C) and (4)(G); §330.56(l) to new §330.63(h); and §330.56(m) to new §330.63(i). Changes are made to §330.63(d)(5) to authorize small municipal solid waste landfills to dispose less than 20 tons of waste per day in a Type IAE landfill unit and less than 20 tons per day in a separate Type IVAE landfill unit located at the same arid exempt landfill facility. The commission moves these provisions to the same section to consolidate the information for waste management unit design required in an application. In addition to consolidating waste management unit design information, the commission adopts §330.63(c)(1)(C) to state that sample calculations will be provided to verify that natural drainage patterns will not be "adversely altered," instead of "significantly altered" as previously required by §330.55(b)(5)(D). The commission adopts the application condition that Federal Emergency Management Agency (FEMA) maps are prima facie evidence of floodplain locations. The commission also adopts new application requirements for information regarding incineration units in new §330.63(d)(2). The commission also will explicitly require information in the application regarding the maximum depth and maximum height of a landfill unit.

The commission repeals §330.64, Additional Standard Permit Conditions for Municipal Solid Waste Facilities, and moves the requirements of this section to new §330.57(g) and §330.73.

The commission repeals §330.65, Registration for Solid Waste Management Facilities. The commission moves the requirements of §330.65(a) to new §330.9(a); §330.65(b)(1) to new §330.9(a); §330.65(b)(2) to new §330.71(g); §330.65(c) to new §330.57(e); §330.65(d) to new §330.57(b); §330.65(e) and (f) to new §§330.201 - 330.247; and §330.65(g) to new §330.69(c) and (d).

The commission adopts new §330.65, Contents of Part IV of the Application. The commission moves the requirements of §330.56(o) to new §330.65(c); and §330.57 and §330.416(m)(2) to §330.65(a). These requirements are moved without substan-

tive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission adds a new exemption in §330.65(b) to exempt a facility from having a site operating plan if the facility has an environmental management system approved by the executive director as described in 30 TAC §90.36.

The commission repeals §330.66, Liquid Waste Transfer Facility Design and Operation, and moves the requirements of §330.66(a)(5) and (7) and §330.66(c) to new §330.11(e); §330.66(b) to new §330.13; §330.66(c) to new §330.9(o) and (p) and §330.11(e)(4) - (7); §330.66(d) to new §330.43; and §330.66(e) to new §330.15.

The commission adopts new §330.67, Property Rights, and moves the requirements from §330.62, with the exception of the provision in §330.62(c), relating to mineral rights, to this section. The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.69, Public Notice for Registrations, and moves the requirements from §330.62 to this section. The commission moves the requirements of §330.72(j) to new §330.69(a); §§330.65(d)(3)(C), 330.71(d)(2), 330.73(c)(2), and 330.407(b) to new §330.69(b); §§330.65(g), 330.71(j), 330.72(h), and 330.407(d) to new §330.69(c); §§330.65(g), 330.71(j), and 330.407(e) to new §330.69(d). These requirements are moved with changes to implement House Bill 1609, 79th Legislature, to make some public meetings discretionary. The rule provides for the transition from mandatory public meetings for registrations to the new requirement to provide notice of the opportunity to request a public meeting for these applications. A cross reference is provided to the statutory requirement in Texas Health and Safety Code, §361.111(3) for some facilities to hold mandatory public meetings. New §330.69 requires applicants for registrations to post signs providing notice of the proposed facility. Proposed §330.69(b)(2), which provided for public meetings for Type IX gas recovery facilities is not being adopted, because these activities will now be authorized by a registration by rule under §330.9(k) and will not be subject to public meeting requirements. Proposed §330.69(a) has been revised to provide that applications for mobile liquid waste processing unit registration applications are not subject to public meeting or sign-posting requirements. The formatting and the rule language are modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.70, Registration of Facilities That Recover Gas for Beneficial Use. As a streamlining initiative, the commission adopts a solid waste registration by rule for Type IX facilities that recover landfill gas for beneficial use. The commission replaces §330.70 with new §330.9(k).

The commission repeals §330.71, Registration for Municipal Solid Waste Facilities That Process Grease Trap Waste, Grit Trap Waste, or Septage. The commission moves the requirements of §330.71(a)(1) to new §330.9(g); §330.71(b) to new §330.15(a); §330.71(c)(1) to new §330.9(a); §330.71(c)(2) to new §330.205(b); §330.71(c)(3) to new §330.207(f); §330.71(c)(4) to new §330.207(d); §330.71(d)(1) to new §330.9(a); §330.71(d)(2) to new §330.69(b); §330.71(d)(3) to new §330.71(e) and (f), §330.71(d)(6) to new §330.71(g); §330.71(d)(7) to new §330.71(a); §330.71(e) to new §330.57; §330.71(e)(4)(A) and (B) to new §330.203(a) and (b); §330.71(f) to new §§330.201 - 330.247; §330.71(h) and (i) to new §§330.671 - 330.675; and §330.71(j) to new §330.69(d).

The commission adopts new §330.71, Duration and Limits of Registrations and Permits. The commission moves the requirements of §330.407(c) to new §330.71(a); §330.63 to new §330.71(b) - (e); §330.73(b)(3) to new §330.71(f); §§330.65(b)(2), 330.71(d)(6), and 330.73(c)(6) to new §330.71(g); and §330.1010(f)(2) to §330.71(j). The commission also incorporates into subsection (a) language from Chapter 305 regarding the executive director's approval or denial of an application. Additionally, the commission adopts language in subsection (i) that a registration shall be considered to be a permit for purposes of revocation and denial under Chapter 305. Further, the commission changes the opportunity for a public hearing regarding denial of a registration for a medical waste mobile treatment unit in repealed §330.1010(f)(2) to a motion to overturn in new §330.71(j). The commission adopts these revisions to delineate which procedural actions are applicable to registrations.

The commission repeals §330.72, Registration for Mobil Liquid Waste Processing Units. The commission moves the requirements of §330.72(a) to new §330.9(h); §330.72(b) to new §330.9(h); §330.72(c)(1) to new §330.207(g); §330.72(c)(2) to new §330.205(d); §330.72(c)(3) to new §330.207(f); §330.72(c)(4) to new §330.63(d)(6)(B); §330.72(d)(2) and (4) and (e) to new §330.217(a); §330.72(f) to new §330.57; §330.72(f)(11)(C) to new §330.207(g); §330.72(h) to new §330.15(a); and §330.72(i) to new §330.69(a).

The commission repeals §330.73, Registration of Demonstration Projects for Liquid Waste Processing Facilities. The commission moves the requirements of §330.73(a) to new §330.9(i), §330.73(b)(1) to new §330.9(a), §330.73(b)(2) to new §330.63(d)(8)(A); §330.73(b)(3) to new §330.71(f); §330.73(b)(4) and (5) to new §330.63(d)(8)(B); §330.73(c)(1) to new §330.9(a); §330.73(c)(2) to new §330.69(b); §330.73(c)(3) to new §330.217(b); §330.73(c)(6) to new §330.71(g); §330.73(d) to new §330.57; §330.73(e) to new §§330.201 - 330.247; §330.73(f) to new §330.15(a); §330.73(h) to new §330.69(d); and §330.73(i) to new §330.63(d)(8)(C).

The commission adopts new §330.73, Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities. The commission moves the requirements of §330.64(a) to new §330.73(a); §330.64(b) to new §330.73(b); and §330.64(c) to new §330.73(c). New §330.73(c) applies only to landfills. The commission changes subsection (c) to require that the preconstruction conference be held 90 days before initial excavation or construction rather than the previous requirement to hold the conference within 90 days after issuance of the permit. The commission adopts this change to address the fact that construction may not begin immediately after the permit is issued. The commission adopts new §330.73(d) to require an owner or operator to submit a certification by a currently licensed professional engineer that a MSW facility has been constructed in accordance with an issued registration or permit and constructed in general compliance with the regulations. The commission requires that this certification be submitted before initial operation and that the

owner or operator maintain the certification on site for inspection. The commission moves the requirements of §330.64(e) to new §330.73(f) and expanded subsection (f) to include registrations and the acceptance of waste, rather than placement. The commission adopts these provisions because these requirements apply to storage and processing solid waste management units in addition to landfills.

The commission repeals §330.75, Animal Crematory Facility Design and Operational Requirements for Permitting by Rule. The commission moves the requirements of §330.75 to §330.7(e) with two changes. To remove inconsistencies between the solid waste and air permitting programs, the commission removes the feed limitation of 1,600 pounds per day specified in §330.75(b)(1) and instead adopts new §330.7(e)(2), which refers to the feed limitations specified for these types of incinerators in §106.494. Also, the commission removes the operating hours specified in §330.75(b)(11) and instead adopts new §330.7(e)(12), which refers to §111.149. These changes will allow for greater flexibility in the operation of animal crematories.

The commission adopts new §330.101, Applicability. The commission moves the requirements of §330.31 to this new section without changes.

The commission adopts new §330.103, Collection and Transportation Requirements. The commission moves the requirements of §330.32(a) - (e) to this new section. As a streamlining initiative, the commission removes the requirement in §330.32(d) that the transporter delivering waste to a solid waste management facility provide documentation that the transporter has arranged the collection routes to eliminate nonallowable wastes from loads transported to that facility. The commission believes that the transporter has the responsibility of not collecting and transporting nonallowable wastes and that a transporter would have difficulty demonstrating compliance with this requirement. The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission adopts new §330.103(f) to refer transporters of untreated medical waste to the requirements of §330.1211, Transporters of Untreated Medical Waste. By stating that the transporter standards of §330.1211 apply only to untreated medical waste, the commission establishes that transporters of treated medical waste need no special registration from the TCEQ.

The commission adopts new §330.105, Collection Vehicles and Equipment, and moves the requirements of §330.33 to this new section. These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.107, Collection Spillage, and moves the requirements of §330.34 to this new section. These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.111, General, and moves the requirements of this section to new §330.121.

The commission repeals §330.112, Pre-Operation Notice, and moves the requirements of this section to new §330.123.

The commission repeals §330.113, Recordkeeping Requirements, and moves the requirements of this section to new §330.125.

The commission repeals §330.114, Site Operating Plan, and moves the requirements of this section to new §330.127.

The commission repeals §330.115, Fire Protection, and moves the requirements of this section to new §330.129.

The commission repeals §330.116, Access Control, and moves the requirements of this section to new §330.131.

The commission repeals §330.117, Unloading of Waste, and moves the requirements of this section to new §330.133.

The commission repeals §330.118, Facility Operating Hours, and moves the requirements of this section to new §330.135.

The commission repeals §330.119, Site Sign, and moves the requirements of this section to new §330.137.

The commission repeals §330.120, Control of Windblown Solid Waste and Litter, and moves the requirements of this section to new §330.139.

The commission repeals §330.121, Easements and Buffer Zones, and moves the requirements of this section to new §330.141 with changes.

The commission adopts new §330.121, General, and moves the requirements of §330.111 to this new section. The commission adopts new §330.121(b) to specify the applicability requirements for Subchapter D for existing facilities and applications that were pending on December 2, 2004. The commission adopts new §330.121(c) to state that authorizations, other than permits and registrations, must comply with the 2006 Revisions in accordance with §330.1(a)(3) and (4)

The commission repeals §330.122, Landfill Markers and Benchmark, and moves the requirements of this section to new §330.143(a).

The commission repeals §330.123, Materials Along the Route to the Site, and moves the requirements of this section to new §330.145.

The commission adopts new §330.123, Pre-Operation Notice, and moves the requirements of §330.112 to this new section.

The commission repeals §330.124, Disposal of Large Items, and moves the requirements of this section to new §330.147.

The commission repeals §330.125, Air Criteria, and moves the requirements of §330.125(b) to new §330.149.

The commission adopts new §330.125, Recordkeeping Requirements, and moves the requirements of §330.113 to this new section.

The commission repeals §330.126, Disease Vector Control, and moves the requirements of this section to new §330.151.

The commission repeals §330.127, Site Access Roads, and moves the requirements of this section to new §330.153.

The commission adopts new §330.127, Site Operating Plan, and moves the requirements of §330.114 to this new section.

The commission repeals §330.128, Salvaging and Scavenging, and moves the requirements of this section to new §330.155.

The commission repeals §330.129, Endangered Species Protection, and moves the requirements of this section to new §330.157.

The commission adopts new §330.129, Fire Protection, and moves the requirements of §330.115 to this new section.

The commission repeals §330.130, Landfill Gas Control, and moves the requirements of this section to new §330.159.

The commission repeals §330.131, Oil, Gas, and Water Wells, and moves the requirements of this section to new §330.161 with changes.

The commission adopts new §330.131, Access Control. The commission moves the requirements of §330.116 and §330.409(4) to new §330.131.

The commission repeals §330.132, Compaction, and moves the requirements of this section to new §330.163.

The commission repeals §330.133, Landfill Cover, and moves the requirements of this section to new §330.165 with changes.

The commission adopts new §330.133, Unloading of Waste, and moves the requirements of §330.117 to this new section.

The commission repeals §330.134, Ponded Water, and moves the requirements of this section to new §330.167.

The commission repeals §330.135, Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills, and moves the requirements of this section to new §330.169.

The commission adopts new §330.135, Facility Operating Hours, and moves the requirements of §330.118 to this new section.

The commission repeals §330.136, Disposal of Special Waste, and moves the requirements of this section to new §330.171 with changes.

The commission repeals §330.137, Disposal of Industrial Waste, and moves the requirements of this section to new §330.173.

The commission adopts new §330.137, Site Sign, and moves §330.119 and §330.409(7) to new §330.137.

The commission repeals §330.138, Visual Screening of Deposited Waste, and moves the requirements of this section to new §330.175.

The commission adopts new §330.139, Control of Windblown Solid Waste and Litter, and moves the requirements of §330.120 to this new section.

The commission adopts new §330.141, Easements and Buffer Zones, and moves the requirements of §330.121 to this new section.

The commission adopts new §330.143, Landfill Markers and Benchmark. The commission moves the requirements of §330.122 to new §330.143(a) and moves §330.55(b)(10) to new §330.143(b). As a flexibility initiative, the commission removes the requirement of §330.55(b)(10)(F) for lettered and numbered markers since any consistent grid coordinate system will suffice.

The commission adopts new §330.145, Materials Along the Route to the Site, and moves the requirements of §330.123 to this new section.

The commission adopts new §330.147, Disposal of Large Items, and moves the requirements of §330.124 to this new section.

The commission adopts new §330.149, Odor Management Plan, and moves the requirements of §330.125(b) to this new section.

The commission repeals §330.150, General, to no longer apply landfill operating standards to MSW storage and processing units through cross-references. The commission specifies all storage and processing unit operating standards in new Subchapter E.

The commission repeals §330.151, Overloading and Breakdown. The commission moves the requirements of §330.151 to new §330.241 with changes.

The commission adopts new §330.151, Disease Vector Control, and moves the requirements of §330.126 to this new section.

The commission repeals §330.152, Sanitation. The commission moves the requirements of §330.152 to new §330.243.

The commission repeals §330.153, Water Pollution Control. The commission moves the requirements of §330.153(a) to new §330.303(b); §330.153(c) to new §330.207(e); and §330.153(d) to new §330.401(b).

The commission adopts new §330.153, Site Access Roads. The commission moves the requirements of §§330.55(a)(2), 330.127, and 330.409(8) to new §330.153.

The commission repeals §330.154, Ventilation and Air Pollution Control, because the language within this section is outdated. The commission replaces this section with new §330.245, Ventilation and Air Pollution Control, which contains current requirements.

The commission repeals §330.155, Litter Control. The commission moves the requirements of §330.155(a) to new §330.233(b). The commission deletes the twice weekly litter pickup requirement of §330.155(b) for storage and processing facilities and adopts the same daily litter pickup requirement of §330.120(2) that is required of landfill facilities.

The commission adopts new §330.155, Salvaging and Scavenging, and moves the requirements of §330.128 to this new section.

The commission repeals §330.156, Safety. MSW facilities are more appropriately subject to other applicable federal, state, and local worker health and safety requirements.

The commission repeals §330.157, Fire Protection. The commission moves the requirements of this section to new §330.221.

The commission adopts new §330.157, Endangered Species Protection, and moves the requirements of §330.129 to this new section.

The commission repeals §330.158, Employee Sanitation Facilities. The commission moves the requirements of this section to new §330.249.

The commission repeals §330.159, Facility Completion and Closure Procedures. The commission adopts closure and post-closure requirements for MSW storage and processing units in new Subchapter K, Closure and Post-Closure.

The commission adopts new §330.159, Landfill Gas Control, and moves the requirements of §330.130 to this new section.

The commission adopts new §330.161, Oil, Gas, and Water Wells, and moves the requirements of §330.131 to this new section with changes.

The commission adopts new §330.163, Compaction, and moves the requirements of §330.132 to this new section.

The commission adopts new §330.165, Landfill Cover, and moves the requirements of §330.133 to this new section with changes. The commission establishes new §330.165(d)(4) to limit alternative material used as daily cover to not contain constituents of concern exceeding the concentrations listed in Table 1 of §335.521(a)(1), polychlorinated biphenyl wastes, total petroleum hydrocarbons in concentrations greater than 1,500 mg/kg, or exceeding constituent limitations imposed on authorized wastes to be landfilled at the facility. The commission adopts these limits to ensure that the composition of the alternative daily cover is appropriate to the wastes being covered within the landfill unit. A provision is added to allow an owner or operator to submit a demonstration for executive director approval that material exceeding 1,500 mg/kg total petroleum hydrocarbons can be a suitable alternative daily cover.

The commission adopts new §330.167, Ponded Water, and moves the requirements of §330.134 to this new section.

The commission adopts new §330.169, Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills, and moves the requirements of §330.135 to this new section.

The commission repeals §330.171, Recordkeeping Requirements Applicable to Owners or Operators of Type V Processing Facilities. The commission moves the requirements of this section to new §330.219(h).

The commission adopts new §330.171, Disposal of Special Wastes, and moves the requirements of §330.136 to this new section with changes. The commission adopts new §330.171(a) to state that Type IV and Type IVAE landfills may dispose of special waste that is consistent with brush, construction or demolition waste, or rubbish that is free of putrescible wastes, free of conditionally exempt small-quantity generator waste, and free of household wastes as established in §330.5(a)(2) and is consistent with the waste acceptance plan required by §330.61(b).

The commission adopts new §330.171(b)(2)(B) to reference the hazardous waste determination requirement of §335.6(c) for generators intending to send Class 1 industrial solid waste to an MSW landfill. The commission adopts new §330.171(b)(4) to require that soils contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 mg/kg total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) be disposed in dedicated cells that meet the requirements of §330.331(e). This section is not intended to prevent use of soils contaminated by petroleum hydrocarbons in concentrations greater than 1,500 mg/kg total petroleum hydrocarbons from being used as alternative daily cover if approved under §330.165(d)(4).

The commission adopts new §330.171(c)(4) to state that Type IV and Type IVAE landfills, in addition to Type I and Type IAE landfills, may accept for disposal nonregulated asbestos-containing materials since these wastes are consistent with construction or demolition waste.

The commission adopts new §330.173, Disposal of Industrial Wastes, and moves the requirements of §330.137(a) - (c) and (e) - (j) to this new section with changes. The commission adopts new §330.173(a) to state that, except for wastes that are Class 1 industrial solid waste only because of asbestos content, Type IAE landfills may not dispose of Class 1 industrial solid waste since these facilities will not have a liner meeting the requirements of new §330.331(e). The above-grade disposal limitation of Class 1 industrial solid waste in §330.137(d) is repealed. The commission will allow the above-grade disposal of Class 1 industrial solid waste to harmonize the Class 1 industrial solid waste management requirements in this chapter with Chapter 335, Subchapter T, Permitting Standards for Owners and Operators of Commercial Industrial Nonhazardous Waste Landfill Facilities. The commission adopts new §330.173(i) to state that Type IV and Type IVAE landfills may dispose of Class 2 industrial solid waste that is consistent with brush, construction or demolition waste, or rubbish that is free of putrescible wastes as established in §330.5(a)(2) and is consistent with the waste acceptance plan required by §330.61(b).

The commission adopts new §330.175, Visual Screening of Deposited Waste, and moves the requirements of §330.138 to this new section.

The commission adopts new §330.177, Leachate and Gas Condensate Recirculation. The commission moves the requirements of §330.5(e)(6)(A)(ii) and §330.56(o)(2) to new §330.177 with changes.

The commission adopts new §330.179, Operational Standards for Class 1 Industrial Solid Waste Management at a Municipal Solid Waste Type I or Type IAE Landfill Facility, in order to harmonize the Chapter 330 operational requirements for MSW landfills that dispose of Class 1 industrial solid waste with the requirements for commercial industrial nonhazardous waste landfills in Chapter 335, Subchapter T.

The commission repeals §330.200, Design Criteria. The commission moves the requirements of §330.200(a) - (c) and (d)(3) - (8) to new §330.331(a) - (c); §330.200(e)(1) and (2) to new §330.331(d)(1) and (2); §330.200(f)(1) and (2) to new §330.331(e)(1) and (2); §330.200(f)(4) to new §330.403; and §330.200(f)(5) to new §330.457(b).

The commission repeals §330.201, Leachate Collection System, and moves the requirements of this section to new §330.333.

The commission adopts new §330.201, Applicability. The commission adopts new §330.201(b) to specify the applicability requirements for Subchapter E. The commission establishes that permitted and registered storage and processing units are under an obligation to apply for a modification within 180 days, unless approved otherwise by the executive director, to incorporate the 2006 Revisions.

The commission repeals §330.202, Alternate Design, and moves the requirements of this section to new §330.335.

The commission repeals §330.203, Special Conditions (Liner Design Constraints). The commission moves the requirements of §330.203(a) - (e) to new §330.337(b) - (f); §330.203(f) to new §330.337(j); §330.203(g) to new §330.337(g); §330.203(h) to new §330.337(a); and §330.203(i) and (j) to new §330.337(h) and (i).

The commission adopts new §330.203, Waste Acceptance and Analysis. The commission moves the requirements of §330.59(d)(1) and §330.71(e)(4)(A) to new §330.203(a); §330.71(e)(4)(B) to new §330.203(b); and §§330.71(f)(11), 330.72(f)(7) and (11)(G), and 330.73(e)(11) to new §330.203(c). The commission explicitly states in subsection (a) that MSW facilities may not receive regulated hazardous waste unless authorized by Chapter 335 to emphasize that receiving facilities

must have separate authority as allowed by Chapter 335 to manage regulated hazardous waste. The commission further will have the owner or operator assess or analyze waste constituent concentrations and characteristics to be managed by the storage and processing units that may impact or influence the design or operation of the facility. The new subsection (a) provides several examples of waste characteristics such as pH, fats, oil and grease concentrations, total suspended solids, chemical oxygen demand, biochemical oxygen demand, organic and metal constituent concentrations, and water content, which could be limiting parameters regarding the overall design and operation of the facility.

The commission repeals §330.204, Geological Faults, and moves the requirements of this section to new §330.555.

The commission repeals §330.205, Soils and Liner Quality Control Plan, and moves the requirements of this section to new §330.339.

The commission adopts new §330.205, Facility-Generated Wastes. The commission moves the requirements of §§330.59(d)(2), 330.71(e)(4)(C), 330.72(f)(4)(C), and 330.73(d)(3)(C) to new §330.205(a); §330.71(c)(2) to new §330.205(b); and §§330.71(f)(12), 330.72(f)(11)(H), and 330.73(e)(12) to new §330.205(d). These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.206, Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER). The commission moves the requirements of §330.206(a) - (c) to new §330.341(a) - (c); §330.206(d) to new §330.143(b)(6); and §330.206(e) to new §330.341(d).

The commission adopts new §330.207, Contaminated Water Management. The commission moves the requirements of §§330.59(b)(3), 330.65(e)(4), 330.72(f)(11)(C), and 330.73(e)(4) to new §330.207(a); §330.409(1), §330.416(m)(1)(C), and copies the requirements of §332.45(1) to new §330.207(b); moves the requirements of §330.409(1) and §330.416(m)(1)(C) to new §330.207(c); and moves the requirements of §330.409(1) and copies the requirements of §332.45(1) to new §330.207(d). The commission adds "contaminated water" to §330.207(b) to specify that the design standards apply to both leachate and contaminated water. The commission moves the requirements of §§330.71(c)(4), 330.72(f)(11)(C), and 330.73(e)(4) to new §330.207(e); §330.153(c) to new §330.207(f); §330.71(c)(3) and §330.72(c)(3) to new §330.207(g); §§330.71(f)(4), 330.72(c)(1), and 330.73(e)(4) to new §330.207(h). Owners or operators may send wastewater off-site to an authorized facility, discharge to a public sewer system, or treat the wastewater on-site prior to an authorized discharge. These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.209, Storage Requirements. The commission moves the requirements of §330.22 and §330.26 to this section; §§330.65(e)(6), 330.71(f)(6), and 330.72(f)(11)(E) to new §330.209(b); and §§330.65(f)(1), 330.71(f)(6)(B), 330.72(f)(11)(E), and 330.73(e)(6) to new §330.209(c). The commission revises §330.209(c) to apply only to transfer stations that recover material from putrescible solid waste and to liquid waste processing units. The formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.211, Approved Containers. The commission moves the requirements of §330.23 to this section without changes.

The commission adopts new §330.213, Citizen's Collection Stations. The commission moves the requirements of §330.24 to new §330.213(a) without changes. The commission adds new §330.213(b) to allow a citizen's collection station to accept sharps from single- or multi-family dwellings, hotels, motels, or other establishments that provide lodging and related services for the public. In such instances, the citizen's collection station will be considered the generator of the sharps.

The commission adopts new §330.215, Requirements for Stationary Compactors. The commission moves the requirements of §330.25(c)(1) and (2) to this section. These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.217, Pre-Operation Notice. The commission moves the requirements of §330.72(d)(2) and (4), and (e) to new §330.217(a); and §330.73(c)(3) to new §330.217(b).

The commission adopts new §330.219, Recordkeeping and Reporting Requirements, that is specific to MSW storage and processing facilities. The commission moves the requirement to maintain the approved application on-site and for inspection from §330.58 to new §330.219(a); and §330.113(b) to new §330.219(b). The commission adds an annual reporting requirement in §330.219(b)(9) for the owner or operator to summarize the recycling activities and percent of incoming solid waste recycled during the past calendar year. The commission adopts new §330.219(c), concerning signatories to reports, that is comparable to the recordkeeping requirements of §305.128, Signatories to Reports. This new rule is necessary to ensure that reports submitted to the TCEQ are provided by authorized persons that are responsible for the operation and compliance of a facility with MSW requirements. The new rule will apply to all MSW facility owners and operators, since §305.128 applies only to permitted facilities. The commission moves the requirements of §330.412 to new §330.219(d); §330.113(c) and §330.960(h)(2) to new §330.219(e); §330.113(d) to new §330.219(f); §330.113(g) to new §330.219(g); and §330.171 to new §330.219(h).

The commission adopts new §330.221, Fire Protection. The commission moves the requirements of §330.157 to §330.221(a), (b), and the first sentence of (c). The commission moves the requirements of §§330.65(e)(7), 330.71(f)(7), 330.72(f)(11)(F), and 330.73(e)(7) to the remaining portion of new §330.221(c). These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004,

and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.223, Access Control. Rather than incorporate by reference, the commission applies the requirements of existing §330.116, Access Control, to new §330.223(a). The commission moves the requirements of §§330.65(e)(1) and (2), 330.71(f)(1) and (2), and 330.73(e)(1) and (2) to new §330.223(b) and (c). These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.225, Unloading of Waste. Rather than move the requirements of §330.117(a) - (c), the commission copies these requirements to new §330.225(a) - (c). These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.227, Spill Prevention and Control, to specify a performance-based standard for storage and processing areas to control and contain spills and contaminated water from leaving the facility. This will help to protect the quality of surface water and groundwater in the state.

The commission adopts new §330.229, Operating Hours. Rather than incorporate by reference, the commission copies the requirements of §330.118 and new §330.135 in this rulemaking to new §330.229. To allow for public input, the commission also establishes a procedure for how owners or operators of MSW storage and processing facilities that do not require a permit or registration may seek expanded operating hours.

The commission repeals §330.230, Applicability, and moves the requirements of §330.230 to new §330.401.

The commission repeals §330.231, Groundwater Monitoring Systems. The commission moves the requirements of §330.231(b) and (c), and (e) to new §330.403(b) and (c), and (e); §330.231(a)(1) to new §330.405(d); §330.231(a)(2) to new §330.403(a)(1); §330.231(d) to new §330.421(a); §330.231(d)(1) to new §330.421(e); and §330.231(d)(2) to new §330.403(d).

The commission adopts new §330.231, Facility Sign. Rather than incorporate by reference, the commission copies the requirements of §330.119, as well as the requirements of §§330.65(e)(2), 330.71(f)(2), and 330.73(e)(2) to new §330.231 and modifies the requirements to fit storage and processing waste management units. The commission adopts this change to make the requirements easier to understand and apply.

The commission repeals §330.233, Groundwater Sampling and Analysis Requirements. The commission moves the requirements of §330.233(a) - (c) to new §330.405(a) - (c), and the later portion of §330.233(b)(3) to new §330.405(b)(3)(A), applicable to Type I landfills. The commission moves the requirements of §330.233(e) to new §330.405(d); §330.233(f) to new §330.405(e); and §330.233(g) to new §330.405(f).

The commission adopts new §330.233, Control of Windblown Material and Litter. Rather than incorporate by reference, the commission applies the requirements of §330.120 as well as moves the requirements of §330.155(a) to new §330.233(b) and modifies the requirements to fit storage and processing waste management units. The commission adopts this change to make the requirements easier to understand and apply.

The commission repeals §330.234, Detection Monitoring Program. The commission moves the requirements of §330.234(a)(1) to new §330.419(b); §330.234(a)(2) to new §330.419(c); §330.234(b) to new §330.407(a); and §330.234(d) to new §330.407(b).

The commission repeals §330.235, Assessment Monitoring Program. The commission moves the requirements of §330.235(a) - (j) to new §330.409(a) - (j) with changes.

The commission adopts new §330.235, Materials Along the Route to the Facility. Rather than incorporate by reference, the commission copies the requirements of §330.123 to new §330.235 and modifies the requirements to fit storage and processing waste management units. The commission adopts this change to make the requirements easier to understand and apply.

The commission repeals §330.236, Assessment of Corrective Measures. The commission moves the requirements of §330.236(a) - (d) to new §330.411(a) - (d) with revisions to §330.411(a) to replace "a reasonable amount of time approved by the executive director" with "180 days" to clearly state what the commission believes is a reasonable time and to reduce confusion or uncertainty with this reporting requirement.

The commission repeals §330.237, Selection of Remedy, and moves the requirements of §330.237 to new §330.413.

The commission adopts new §330.237, Facility Access Roads. Rather than incorporate by reference, the commission applies the requirements of §330.127 to new §330.237 and modifies the requirements to fit storage and processing waste management units. The commission adopts this change to make the requirements easier to understand and apply.

The commission repeals §330.238, Implementation of the Corrective Action Program. The commission moves the requirements of §330.238(a) - (d) to new §330.415(a) - (d); and §330.238(e) - (g) to new §330.415(f) - (h).

The commission repeals §330.239, Groundwater Monitoring at Type IV Landfills. The commission moves the requirements of §330.239 to new §330.417.

The commission adopts new §330.239, Noise Pollution and Visual Screening. Rather than incorporate by reference, the commission copies the requirements of §330.138 as well as the requirements of §§330.65(e)(8), 330.71(f)(8), and 330.73(e)(8) to new §330.239 and modifies the requirements to fit storage and processing waste management units. The commission adopts this change to make the requirements easier to understand and apply.

The commission repeals §330.240, Groundwater Monitoring at Other Types of Landfills and Facilities, and moves the requirements of this section to new §330.401(a).

The commission repeals §330.241, Constituents for Detection Monitoring, and moves the requirements of this section to new §330.419(a).

The commission adopts new §330.241, Overloading and Breakdown. The commission moves the requirements of §330.151 to new §330.241; §330.71(f)(13) and §330.73(e)(13)

to new §330.241(a)(1); §330.72(f)(11)(i) to new §330.241(a)(2); and §§330.65(d)(4)(B), 330.71(e)(6)(M), 330.72(f)(6)(M), and 330.73(d)(4)(M) to new §330.241(c) and modifies the requirements to fit storage and processing waste management units. The commission adopts this change to make the requirements easier to understand and apply.

The commission repeals §330.242, Monitor-Well Construction Specifications. The commission moves the requirements of §330.242 to new §330.421.

The commission adopts new §330.243, Sanitation. These provisions are moved without change from §330.152 to new §330.243 under the new renumbering and relettering of Subchapter E.

The commission adopts new §330.245, Ventilation and Air Pollution Control. The commission moves the requirements of §§330.71(f)(5)(G), 330.72(f)(11)(D)(v), and 330.73(e)(5)(F) to new §330.245(a); §§330.71(f)(5)(A), 330.72(f)(11)(D)(vi), and 330.73(e)(5)(C) to new §330.245(b); §330.71(f)(5)(i) and §330.73(e)(5)(G) to new §330.245(c); §§330.59(b)(6), 330.65(e)(5), 330.71(f)(5)(A) and (J), and 330.73(e)(5)(A) and (H) to new §330.245(d); §§330.71(f)(5)(E), 330.73(e)(5)(A), (E), and (H) to new §330.245(e); §§330.59(b)(6), 330.65(e)(5)(C), 330.71(f)(5)(C) and (H), 330.72(f)(5)(C), and 330.73(e)(5)(D) to new §330.245(f); §330.65(f)(1) and §330.71(f)(6)(B) to new §330.245(g); §330.66(d)(3) to new §330.245(h); and §330.72(f)(11)(D)(iii) to new §330.245(i). The commission copies the requirement from new §330.989(g) to new §330.245(j) to consolidate, in one location, the operation and reporting requirements for ventilation and air pollution control. The commission copies the requirement from §330.125(a) to new §330.245(k) and modifies the requirement to fit storage and processing waste management units. The commission adopts this change to make the requirements easier to understand and apply. The commission copies the requirement from §330.134 to new §330.245(l) and modifies the requirement to fit storage and processing waste management units. The commission adopts this change to make the requirements easier to understand and apply.

The commission adopts new §330.247, Health and Safety, to specify that the facility will comply with applicable federal, state, and local worker health and safety requirements.

The commission adopts new §330.249, Employee Sanitation Facilities. The commission moves the requirements of §330.158 to this new section. These requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.250, Applicability, and moves the requirements of this section to new §330.451. The commission repeals the requirement for the owner or operator to submit a certification of compliance with the requirements of §§330.300, 330.301, and 330.305, since the effective date of this requirement has passed.

The commission repeals §330.251, Closure Requirements for MSWLF Units That Stop Receiving Waste Prior to October 9, 1991, and MSW Sites, and moves the requirements of this section to new §330.453.

The commission repeals §330.252, Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1991, But Stop Receiving Waste Prior to October 9, 1993 and moves the requirements of this section to new §330.455.

The commission repeals §330.253, Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993, and MSW Sites, and moves the requirements of §330.253(b) - (c), (d)(1) - (5), (e)(1), (2), (4) - (6), and (10), and (f) to new §330.457; §330.253(d)(6) to new §330.503(a); §330.253(e)(3) to new §330.461(a); §330.253(e)(7) to new §330.461(b); §330.253(e)(8) to new §330.461(c); and §330.253(e)(9) to new §330.461(d).

The commission repeals §330.254, Post-Closure Care Maintenance Requirements, and moves the requirements of this section to new §330.463.

The commission repeals §330.255, Post-Closure Land Use. The commission moves §330.255(c)(4) and (5) to new §330.955(d) and (e); §330.255(e) to new §330.955(b); and §330.255(f)(4) - (6) to new §330.957(j)(1)(D) - (F).

The commission repeals §330.256, Completion of Post-Closure Care, and moves the requirements to the new §330.465, Certification of Completion of Post-Closure Care.

The requirements in Subchapter F are new and have not previously been in Chapter 330. These requirements are based on the most up-to-date United States Environmental Protection Agency (EPA) "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," SW846. Activities governed by this subchapter must also meet the requirements in 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification. The commission adopts these requirements to ensure that the data required to be submitted to the agency under these rules meets national quality assurance (QA) and quality control (QC) standards. A provision was added to §330.261(a) for Subchapter F to expire January 1, 2009. This will allow the commission time to review the rule and determine whether to continue it as adopted in coordination with the pending implementation of the National Environmental Laboratory Accreditation Conference Standards.

The commission adopts new §330.261, Applicability and Purpose, to apply to MSW facilities submitting laboratory data and analyses relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions to the commission. The commission also specifies in §330.261 the applicability requirements for Subchapter F. The commission requires that owners and operators of MSW facilities shall apply to modify existing inconsistent provisions to comply with this subchapter within 180 days of the 2006 Revisions becoming effective.

The commission adopts new §330.263, Laboratory Analyses, to require the owner or operator to identify the laboratory analyses to be performed on the samples collected for analysis and to describe the practical quantitation limits for the constituents of concern, which must be below the maximum contaminant level values or as low as practicably feasible.

The commission adopts new §330.265, Reporting Requirements, to require that analytical results be reported to the commission in a data package that contains, at a minimum, the analytical test reports documenting the analytical results and methods. The test reports will include the method-required QC information needed to validate the analytical results.

The commission adopts new §330.267, Records Control, to establish and maintain procedures for identification, collection, indexing, access, filing, storage, maintenance, and disposal of QA

records and technical records. QA records will include reports from internal audits and management reviews, as well as records of corrective and preventative actions.

The commission adopts new §330.269, Matrix Spikes and Matrix Spike Duplicates, to require environmental samples to which analyses of concern are added by the laboratory in known concentrations and analyzed to assess the effects of the sample matrix on the analytical results. Matrix spikes and matrix spike duplicate sample recovery percentages and relative percent differences for each matrix and analyte will be included in all data packages submitted to the Municipal Solid Waste Section.

The commission adopts new §330.271, Method Blanks, to assess sample contamination and its source.

The commission adopts new §330.273, Laboratory Control Samples and Laboratory Control Sample Duplicates, to require a laboratory sample matrix that is free from analytes of interest and spiked with known amounts of analyte(s) or material(s) containing known and verified amounts of analytes. The laboratory control samples and laboratory control sample duplicates are used to establish intra-laboratory or analyst-specific precision and accuracy of certain parts of the analytical methodology.

The commission adopts new §330.275, Surrogates, in order to establish the measurement of compounds that mimic the analyte of interest that must be added to all samples, standards, and blanks for all organic chromatography methods except when the matrix precludes use of a surrogate or when a surrogate is not available. The commission believes that poor surrogate recovery may indicate a problem with the sample composition.

The commission adopts new §330.277, Data Reduction, Evaluation, and Review, in order to require the laboratory to consider the project data quality objectives and to determine if the sample test results meet the project needs with regard to completeness, representativeness, and accuracy (bias and precision).

The commission adopts new §330.279, Matrix Interferences and Sample Dilutions, so that a laboratory will document and report problems and anomalies observed during analyses that might have an impact on the quality of the data. The laboratory will be required to document any evidence of matrix interference or any situation where the analysis is out of control (QC results outside of limits), as well as the measures taken by the laboratory to eliminate or reduce the interference or corrective action to bring the analysis back into control.

The commission repeals §330.280, Applicability, and moves the requirements of this section to new §330.501.

The commission repeals §330.281, Closure for Landfills, and moves the requirements of this section to new §330.503.

The commission adopts new §330.281, Chain of Custody, to require that forms be used to document the custody of samples during collection in the field and during transport to the laboratory. The commission establishes that these forms may also be used by the laboratory to document the movement and analysis of samples within the laboratory. The commission corrects the sample preservation temperatures listed in §330.281(d) to 2, 4, and 6 degrees Celsius.

The commission repeals §330.282, Closure for Process Facilities. The commission moves the requirements of §330.282(a) to new §330.505(a); §330.282(b)(1) to new §330.505(b)(1); and §330.282(b)(2) to new §330.501. Section 330.282(b)(2) required any MSW processing facility to establish financial assurance for closure. The commission deletes this requirement and replaces it with the requirement in §330.501 that only those facilities required to have financial assurance are subject to Subchapter L. The commission adopts this change because it is unnecessary for facilities that are not required to have financial assurance to provide a closure cost estimate. The commission moves §330.282(b)(3) to new §330.505(b)(2). The commission moves §330.282(c) to new §330.459(d) to better organize the rule by incorporating all the closure requirements into one section. The commission deletes §330.282(d) because the language is unnecessary.

The commission repeals §330.283, Post-Closure Care for Landfills, and moves the requirements of this section to new §330.507.

The commission adopts new §330.283, Sample Collection and Preparation, to require the owner or operator to collect proper sample volumes that will be representative of the waste or medium and be preserved and analyzed within the appropriate holding times.

The commission repeals §330.284, Corrective Action for Landfills, and moves the requirements of this section to new §330.509.

The commission adopts new §330.285, Analytical Method Detection Limits and Method Performance, in order to assess whether a reported method detection limit is appropriate and relevant for the intended use of the data and how the analytical laboratory established procedures between detection limits and the quantitation limits.

The commission adopts new §330.287, Instrument and Equipment Calibration and Frequency, to require that support laboratory operations and measurements be calibrated or verified as often as the manufacturer recommends using National Institute of Standards and Technology (NIST) traceable references, when available, over the entire range of use.

The commission adopts new §330.289, Laboratory Case Narrative, to require the reporting of QC results within the laboratory case narrative that explain each failed precision and accuracy measurement determined to be outside of the laboratory and/or method control limits, and the effect of the failure on the results.

The commission repeals §330.300, Airport Safety, and moves the requirements of this section to §330.545 with changes to incorporate new federal requirements related to small general service airports. In §330.300(c), the commission deletes the requirement to show the distance from an airport as part of a permit transfer because a permit transfer does not change the operations of the facility.

The commission repeals §330.301, Floodplains, and moves the requirements of this section to §330.547 with changes. The commission deletes the requirement to show the facility will not restrict the flow of a 100-year flood as part of a permit transfer because a permit transfer does not change the operations of the facility.

The commission adopts new §330.301, Applicability, to require a permittee or registrant to apply to modify existing inconsistent provisions within 180 days after the effective date of this chapter. Owners or operators of permitted or registered facilities are required to review their surface water drainage plans for compliance and shall provide revisions to approved drainage plans as a modification in accordance with §305.70(j), to incorporate the revised requirements.

The commission repeals §330.302, Wetlands, and moves the requirements of this section to new §330.553.

The commission repeals §330.303, Fault Areas, and moves the requirements of this section to new §330.555.

The commission adopts new §330.303, Surface Water Drainage for Municipal Solid Waste Facilities. The commission moves the requirements of §330.409(1) and §330.416(m)(1)(A) and (B) to new §330.303(a); and §330.153(a) to new §330.303(b). The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.304, Seismic Impact Zones, and moves the requirements of this section to new §330.557 with changes. The commission deletes the seismic impact demonstration as part of a permit transfer because a permit transfer does not change the relationship of the facility to seismic conditions.

The commission repeals §330.305, Unstable Areas, and moves the requirements of this section to new §330.559 with changes. The commission deletes the unstable area demonstration as part of a permit transfer because a permit transfer does not change the relationship of the facility to unstable areas.

The commission adopts new §330.305, Additional Surface Water Drainage Requirements for Landfills. The commission moves the requirements of §330.56(f)(2) and §330.408(2) to new §330.305(a); §330.55(b)(2) and (3) to new §330.305(b) and (c); §330.55(b)(8) to new §330.305(d); and §330.55(b)(4) - (6) to new §330.305(e) - (g). The commission adopts these requirements under the section titled "Additional Surface Water Drainage Requirements for Landfills" to make it clear that only owners or operators of landfills need to perform the calculations included in this section. The commission requires, in §330.305(d), that the owner or operator provide long-term erosional stability for the landfill unit during all phases of unit operation, closure, and post-closure care from the previous requirement in §330.55(b)(8), which only requires long-term erosional stability for the final cover design. In §330.305(f), the commission updates the calculation methods to current drainage models. The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.307, Flood Protection for Landfills. The commission moves the requirements of §330.55(b)(7) to new §330.307(a) and (b). The commission adopts these requirements under the section titled "Flood Protection for Landfills" to make it clear that these flood protection requirements only apply to landfills. The requirements are moved without changes.

Throughout new Subchapter H, the commission refers to a "geomembrane liner" rather than a "flexible membrane liner" to be consistent with common and accepted usage of the term.

The commission adopts new §330.331, Design Criteria. The commission moves the requirements of §330.200(a) - (c) and (d)(3) - (8) to new §330.331(a) - (c); §330.200(e)(1) and (2) to new §330.331(d)(1) and (2); and §330.200(f)(1) and (2) to new §330.331(e)(1) and (2). The commission adopts new §330.331(a) to require that vertical expansions of Type I landfills over landfills that do not meet the liner design requirements of this subchapter must satisfy the liner requirements of this subchapter for the vertically expanded portions of the landfills. Also, the commission establishes that this subsection will apply to existing Type IAE landfills that subsequently no longer satisfy the conditions for the arid exemption specified in §330.5(b)(1). The commission adds §330.331(d)(3) to reference the allowance for an alternative liner design in §330.335 for Type IV landfills. Previously, regulations did not allow alternative liner designs for Type IV landfills. The commission adopts this section to provide owners and operators of Type IV landfills flexibility for landfill liner designs. The commission adds §330.331(e)(3) to reference the design requirements of §335.584(b)(1) and (2) for MSW Type I landfill facilities managing Class 1 industrial solid waste that are located over relatively permeable soil strata or regional aquifers.

The commission adopts new §330.333, Leachate Collection System. The commission moves the requirements of §330.56(o) and §330.201 to new §330.333.

The commission adopts new §330.335, Alternative Liner Design, and moves the requirements of §330.202 to this section. The commission will allow alternative liner designs for Type I and Type IV landfills. Previously, regulations did not allow alternative liner designs for Type IV landfills. The commission adopts this section to provide owners and operators of Type IV landfills flexibility for landfill liner designs. Type I landfill alternative liner designs must include a leachate management system. The commission believes that leachate management is a necessary component of alternative liner designs for Type I landfills. The commission will allow the use of appropriate and current computer modeling software by removing the specific examples of the "HELP" and "Multi-Media" modeling software requirements. This will allow owners and operators to use the most up-to-date design models when demonstrating the effectiveness of alternative liner designs.

The commission adopts new §330.337, Special Liner Design Constraints. The commission moves the requirements of §330.203(h) to new §330.337(a); §330.203(a) - (e) to new §330.337(b) - (f); §330.203(g) to new §330.337(g); §330.203(i) and (j) to new §330.337(h) and (i); and §330.203(f) to new §330.337(j). The commission requires that the ballast evaluation report be submitted in duplicate instead of the previously required triplicate. As a streamlining initiative, the commission removes the requirement for executive director approval of ballast evaluation reports. The commission establishes that if the executive director provides no response within 14 days of the date of receipt of the ballast evaluation report, the owner or operator may discontinue dewatering or ballasting operations. The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.339, Liner Quality Control Plan, and moves the requirements of §330.205 and §330.410 to this section. The commission adopts new §330.339(b)(3) to state that the liner QC plan must describe installation methods and QC testing and reporting following placement for any geomembrane liner. The commission anticipates revising

the geomembrane liner QC guidance to de-emphasize the previous recommendation that geomembrane liner seams be destructively tested every 500 feet. The commission is aware that liner seaming and testing technologies have advanced sufficiently and that the recommendation for geomembrane liner destructive testing every 500 feet may be outdated and even counterproductive. The commission acknowledges that construction damage can occur to the geomembrane panels and seams during placement of the protective cover layer and suggests the use of nondestructive testing of a geomembrane liner after placement of the protective cover layer. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.341, Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report, and moves the requirements of §330.206 and §330.411 to this section. As a streamlining initiative, the commission removes the requirement for executive director approval of soil and liner evaluation reports and geomembrane liner evaluation reports. The commission establishes that if the executive director provides no response within 14 days of the date of receipt of the soil and liner evaluation report, the owner or operator may continue facility construction or operation. The commission removes the recommendation to cover a constructed soil liner with waste within six months of construction and instead recommends that the soil liner be covered or otherwise protected. The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

Throughout new Subchapter I, the commission changes "in air" to "percent by volume" when describing the compliance level for subsurface methane gas migration. The commission adopts this change in order to have a more clearly enforceable standard regarding the subsurface monitoring of methane migration.

The commission adopts new §330.371, Landfill Gas Management. The commission moves the requirements of §330.56(n) to this section. The commission changes "in air" to "percent by volume." In §330.371(l), the commission adopts these revisions to Subchapter I to supersede any conflicting provisions contained in any existing permits upon the effective date of the 2006 Revisions.

The commission repeals §330.401, Definitions, and moves this section to new §330.3. The commission has deleted the definition for "Closed Municipal Solid Waste Landfill (CMSWLF)" from §330.401 because this term is unnecessary.

The commission adopts a new §330.401, Applicability. The commission specifies in §330.401 the applicability requirements for Subchapter J. New §330.401(a) states the applicability requirements under Subchapter J for landfill units that stopped receiving waste before the effective date of the 2006 Revisions. New §330.401(b) states the applicability requirements under Subchapter J for landfill units that continued accepting waste after the effective date of the 2006 Revisions. The commission moves the requirements of §330.240 and §330.416(m)(1)(G)(ii) to new §330.401(a) and also moves §330.230(b) - (d) to new §330.401(d) - (f). The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission adopts new §330.401(c) to refer to the groundwater monitoring requirements of §332.47(6)(C)(ii) for composting operations that must be permitted.

Under the general applicability of §330.1(a)(2), the commission establishes that applications for permits and major amendments that are administratively complete after the effective date of the chapter will be subject to the new well spacing requirements of §330.403(a)(2).

The commission repeals §330.402, Applicability, and moves the requirements of this section to new §330.9(j).

The commission repeals §330.403, General Requirements. The requirements of §330.403(1) - (6) are in new §330.15(a) and (i). The requirement of §330.403(8) to manage hazardous constituents at an authorized facility is redundant with new §§330.7, 330.9, 330.11, and 330.15. The commission believes that the requirement for a mandatory preapplication meeting, as required by §330.403(10), is unnecessary and deletes this requirement. The commission moves the requirements of §330.403(7) to new §330.601(1); and §330.403(9) to new §330.601(2).

The commission adopts new §330.403, Groundwater Monitoring Systems. The commission moves the requirements of §330.231(a) - (c) and (e) to new §330.403(a) - (c) and (e); and §330.231(d)(2) to new §330.403(d). The commission adopts new §330.403(a)(2) to provide that monitoring well spacing for a municipal solid waste landfill unit shall not exceed 600 feet without an applicable site-specific technical demonstration that may be supplemented with a multi-dimensional fate and transport numerical flow model. The commission has the authority to require a demonstration for well spacing less than 600 feet on a site-specific basis under §330.403(e). The commission also requires groundwater monitoring wells to be installed at the point of compliance. Since the point of compliance can be anywhere from the waste management unit boundary to no more than 500 feet from the unit boundary, new §330.403(a)(2) further states that the placement of wells establishes the vertical plane at which owners or operators must determine whether releases from the waste management unit have occurred. The commission refers to a "point of compliance" monitoring system rather than a "downgradient" monitoring system. Some locations may have complex hydrogeologic characteristics or variable groundwater gradients that may render a simple downgradient determination unfeasible. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.404, Variances, and moves this section to new §330.603.

The commission repeals §330.405, Relationship with Operating Landfills, and moves this section to new §330.605.

The commission adopts new §330.405, Groundwater Sampling and Analysis Requirements. The commission moves the requirements of §330.233(a) and (b) to new §330.405(a) and (b). The commission moves the latter portion of §330.233(b)(3) to new §330.405(b)(3)(A) and revises the language to be specific to Type I landfills. The commission adopts new §330.405(b)(3)(B) to be specific to Type IV landfills and new §330.405(b)(3)(C) to

be specific to other waste management units. The commission moves the requirements of §330.233(c) to new §330.405(c), except that the commission will no longer allow field-filtering of groundwater samples prior to laboratory analysis. The commission believes field-filtered groundwater samples do not represent constituents released in colloidal form from a landfill or other monitored unit. In order to truly monitor whether a waste management unit has contaminated the groundwater, the commission believes that the owner or operator should compare unfiltered groundwater samples collected from point of compliance wells to unfiltered groundwater samples collected from background wells. The commission repeals §330.233(d); moves the requirements of §330.233(e) and §330.231(a)(1) to new §330.405(d); moves the requirements of §330.233(f) to new §330.405(e); and moves the requirements of §330.233(g) to new §330.405(f). The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.406, relating to Air Quality Requirements, and moves this section to new §330.607.

The commission repeals §330.407, Registration Application Processing. The commission moves the requirements of §330.407(b) to new §330.69(b); §330.407(c) to new §330.71(a); §330.407(d) to new §330.69(c); and §330.407(e) to new §330.69(d). The commission repeals §330.407(a) regarding the assignment of an identification number to a registration application because an administrative review is no longer a separate review for registration applications. As a streamlining initiative to expedite registration application processing, administrative and technical reviews are now a combined review.

The commission adopts new §330.407, Detection Monitoring Program for Type I Landfills. The commission adds "Type I Landfills" to the title to make clear that this program only applies to Type I landfills. The detection monitoring program requirements for Type IV landfills are covered in new §330.417. The commission moves the requirements of §330.234(b) to new §330.407(a); and §330.234(d) to new §330.407(b). The commission adopts new §330.407(b)(3)(A) - (D) and (4) and (c). In §330.407(b), the commission reduces the reporting requirement from two separate reports after each sampling event to requiring that the owner or operator make a determination of whether there has been a significant change in the quality of the groundwater. The commission intends for the owner or operator to make this determination after each sampling event when in detection monitoring and believes that 60 days provides adequate time for sample analysis and data computation and analysis. If there has been a significant change in the quality of the groundwater, then the owner or operator is required to notify the executive director. In addition, the commission establishes that if the owner or operator wants to demonstrate that the contamination came from a source other than the monitored landfill unit, the owner or operator must not filter the groundwater samples to be used in the demonstration before laboratory analysis. The commission adopts this requirement to ensure that any contamination that exists in the groundwater samples is not filtered out before the analysis. Also, the commission adds that the executive director may require the owner or operator to provide an analysis of the landfill leachate. The commission adopts this requirement to allow the executive director to compare the groundwater sample to the leachate sample. The commission copies requirements from §335.164(7)(F) to §330.407(b)(3) to allow the owner or operator 90 days after determining a significant change in groundwater quality to prepare and submit a report demonstrating that a source other than the monitored waste management unit has caused the change in groundwater quality. Additionally, based on the reduction in reporting in §330.407(b), the commission adopts new subsection (c) to establish an annual detection monitoring report. This report will summarize all groundwater monitoring events and results for the previous year and will assist the executive director in evaluating the groundwater data submitted by the owner or operator.

Finally, the commission adopts new subsection (d) to require that the owner or operator must submit to the executive director a permit amendment or modification within 90 days of determining that changes to the detection monitoring program are necessary. The commission adopts this requirement to ensure that the reported groundwater constituent concentrations are representative of whether the landfill has impacted the groundwater.

The commission repeals §330.408, Location Standards. The commission moves the requirements of §330.408(1) to new §330.63(c)(2)(D) and §330.547; §330.408(2) to new §330.305(a); §330.408(3) to new §330.553(b); §330.408(4) to new §330.543(b); §330.408(5) to new §330.549(a); and §330.408(6) to new §330.545(a).

The commission repeals §330.409, Operational Requirements and Design Criteria. The commission moves §330.409(1) to new §§330.63(c)(2)(D), 330.207(b) - (d), and 330.303(a); §330.409(2) to new §330.609(1); §330.409(3) to new §330.609(2); §330.409(4) to new §330.131; §330.409(5) to new §330.15(a); §330.409(6) to new §330.609(3); §330.409(7) to new §330.137; §330.409(8) to new §330.153; and §330.409(9) - (16) to new §330.609(4) - (11).

The commission adopts new §330.409, Assessment Monitoring Program. The commission moves the requirements of §330.235(a) to new §330.409(a); and §330.235(b) to new §330.409(b). The commission will require the owner or operator to establish background concentrations in only background wells for any additional 40 CFR Part 258 Appendix II hazardous constituents detected in point of compliance wells. The commission believes it is inappropriate to also use point of compliance wells to establish background concentrations of Appendix II hazardous constituents that may be releasing from a landfill or compost unit. The commission moves the requirements of §330.235(c) to new §330.409(c) and removes the annual limitation on the alternative frequency for the complete analysis of 40 CFR Part 258 Appendix II hazardous inorganic and organic constituents to be consistent with the applicable federal regulations. The commission moves the requirements of §330.235(d) to new §330.409(d) with a revised time frame for reporting from 45 to 60 days to allow more time to prepare the report and to be consistent with the time frame allotted in new §330.407(b) for the owner or operator to make a determination during detection monitoring; §330.235(e) to new §330.409(e); §330.235(f) to new §330.409(f); §330.235(g)(1)(A) - (D) to new §330.409(g)(1)(A) - (D), respectively; §330.235(g)(2) to new §330.409(g)(2) and (3); §330.235(h) to new §330.409(h); §330.235(i) to new §330.409(i); and §330.235(j) to new §330.409(j). The commission adopts new §330.409(g)(1)(B) to require the owner or operator to install at least one additional monitoring well between a monitoring well having a statistically significant level above the groundwater protection standard and the next adjacent

wells along the point of compliance before the next sampling event in order to better characterize the contaminant plume. The commission adopts new §330.409(g)(2)(A) - (D) to specify time frames for submitting alternative source demonstrations for apparent statistically significant levels above groundwater protection standards and adopts new §330.409(k) to require an annual assessment monitoring report. The commission adopts §330.409(k) to assist the executive director in evaluating the groundwater data submitted by the owner or operator.

The commission repeals §330.410, Soils and Liner Quality Control Plan, and moves the requirements of this section to new §330.339 and §330.609(1).

The commission repeals §330.411, Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER), and moves the requirements of this section to new §330.341 and §330.609(1)(D).

The commission adopts new §330.411, Assessment of Corrective Measures. The commission moves the requirements of §330.236(a) - (d) to new §330.411(a) - (d) with revisions to §330.411(a) to replace "a reasonable amount of time approved by the executive director" with a more specific "180 days." The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.412, Records Requirements, and moves the requirements of this section to new §330.219(d).

The commission repeals §330.413, Certification by Engineer, Ownership or Control of Land, and Inspection. The commission moves the requirements of §330.413(a) to new §330.73(d); §330.413(b) to new §330.57(d); and §330.413(c) to new §330.73(e).

The commission adopts new §330.413, Selection of Remedy. The commission moves the requirements of §330.237(a) - (f) to new §330.413(a) - (f). The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.414, Required Forms, Applications, and Reports. The commission moves §330.414(2) and (3) to new §330.611(1) and (2).

The commission repeals §330.415, Additional Requirements for Municipal Solid Waste Mining Facilities. The commission moves the requirements of §330.415(b) - (d) to new §330.73(a) - (c); and §330.415(e) and (f) to new §330.73(e) and (f).

The commission adopts new §330.415, Implementation of the Corrective Action Program. The commission moves the requirements of §330.238(a) - (d) to new §330.415(a) - (d); and the requirements of §330.238(e) - (g) to new §330.415(f) - (h). The commission adds a new annual corrective action report in §330.415(e). This report will summarize the corrective action activities and effectiveness of the activities for the previous year and will assist the executive director in evaluating the corrective action data submitted by the owner or operator. The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.416, Registration Application Preparation. The commission moves the requirements of §330.416(a) and (b) to new §330.57(g)(2) and(3); §330.416(d) to new §330.219(a); §330.416(e) to new §330.57(d); §330.416(e)(3) to new §330.61(a); §330.416(g) to new §330.143(b)(8); §330.416(h)(1) to new §330.57(f); §330.416(h)(2) and (j) to new §330.57(g); §330.416(i) to new §330.57(h); §330.416(k) to new §330.61(h); §330.416(l) to new §330.61(i); §330.416(m)(1)(A) and (B) to new §330.303(a); §330.416(m)(1)(C) to new §330.207(b) and (c); §330.416(m)(1)(D) to new §330.63(c) and §330.305; §330.416(m)(1)(E) to new §330.63(d)(6); §330.416(m)(1)(F) to new §330.63(e); §330.416(m)(1)(G) to new §330.401; §330.416(m)(1)(H) to new §330.61(d); §330.416(m)(1)(I) to new §330.63(d)(6)(B); and §330.416(m)(2) to new §330.65.

The commission repeals §330.417, Sampling and Analysis Requirements for Final Soil Product, and moves the requirements of this section to new §330.613.

The commission adopts new §330.417, Groundwater Monitoring at Type IV Landfills. The commission moves the requirements of §330.239(a) and (b) to new §330.417(a) and (b). The commission adopts new §330.417(b)(5) to require that the owner or operator determine whether there has been a release within 60 days of the sampling event. The commission intends for the owner or operator to make this determination after each sampling event when in detection monitoring and believes that 60 days provides adequate time for sample analysis and data computation and analysis. The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.418, Final Soil Product by Grade, and moves the requirements of this section to new §330.615.

The commission repeals §330.419, Allowable Uses of Final Soil Product by Grade, and moves the requirements of this section to new §330.615.

The commission adopts new §330.419, Constituents for Detection Monitoring. The commission moves the requirements of §330.234(a)(1) to new §330.419(b); §330.234(a)(2) to new §330.419(c); the requirements of §330.241 to new §330.419(a); and the requirements of §330.234(a)(1) and (2) to new §330.419(b) and (c). The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.421, Monitor Well Construction Specifications. The commission moves the requirements of §330.231(d) and §330.242(a) to new §330.421(a); and §330.242(b) - (g) to new §330.421(b) - (g). The commission adopts new §330.421(a)(1)(D) to allow a licensed professional geoscientist or engineer to supervise the preparation of groundwater monitoring well boring logs, instead of requiring direct observation and boring log preparation by the professional. The commission believes that the requirement for a licensed professional geoscientist or engineer to observe the monitor

well installation and prepare the boring log creates an unnecessary burden and that the duty can be performed by others with professional supervision. All other requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.451, Applicability, and moves the requirements of §330.250 to this section with changes. The commission does not adopt the proposed provisions of §330.401(a) that would have subjected closed facilities to revised monitoring well spacing requirements if a release is detected. In §330.451(d), the commission specifies the applicability requirements for Subchapter K. The commission establishes that permits that existed before the 2006 Revisions are effective remain valid subject to the requirements of §330.401(b) which restricts filtering groundwater samples. The formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.453, Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites, and moves the requirements of §330.251 to this section. In §330.453(e), the commission changes "the effective date of this title" to "October 9, 1993." The commission adopts this change to ensure that the requirement for final cover placement is not inadvertently changed. If the commission does not make this change it would alter the requirement for final cover placement by allowing until the effective date of this adopted rule for the final cover to be completed. In the previous rule, the closure requirements for Type IV landfills are specified in Subchapter D, which cross-references Subchapter J. In this rule, the commission consolidates the Type IV landfill closure requirements into this section. Therefore, the commission also adds "Type IV" to the title to accurately reflect the contents of this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.455, Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993, and moves the requirements of §330.252 to this section. In new §330.455(b), the commission changes "within 180 days of the last receipt of wastes or by the effective date of this title, whichever is later" to "October 9, 1994." The latest date for the final cover to be completed was October 9, 1994. The commission adopts this change to ensure that the requirement for final cover placement is not inadvertently changed. If the commission did not make this change it would alter the requirement for final cover placement by allowing until the effective date of this adopted rule for the final cover to be completed. The remainder of the requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.457, Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993. The commission moves the requirements of §330.253(b) - (c), (d)(1) - (5), (e)(1), (2), (4) - (6), and (10), and (f) to §330.457(a) and (c) - (f). In new §330.457(a)(2), the commission changes "infiltration layer" to "clay rich soil cover layer" to ensure that appropriate soil will be used to prevent infiltration when covering MSW landfill units having no bottom liner. The commission moves the requirement for final cover for a Class 1 industrial solid waste trench from §330.200(f)(5) to new §330.457(b). The commission removes the requirement for an infiltration layer and an erosion layer from an alternative final cover design in new §330.457(d) to allow greater flexibility for designs such as evapotranspiration final cover systems. The commission moves the requirement from §330.253(e)(8) to new §330.457(g). Additionally, the commission deletes the words "and MSW sites" from the title of this section. This change will mean that all MSW sites will be subject to the post closure requirements in §330.463(a), which requires five years of post-closure care. Under repealed §330.253, MSW sites were subject to 30 years of post-closure care. The commission removes this inconsistency.

The commission adopts new §330.459, Closure Requirements for Municipal Solid Waste Storage and Processing Units. The commission adopts new subsection (a) to incorporate specific closure language for the removal of waste at storage and processing units. In the previous rule there was only closure language for leaving waste in place at landfills. Therefore, to provide clarity to the owners and operators of waste storage and processing units on how to close the units at their facilities, the commission adopts new subsection (a). The commission copies the requirement in §332.47(9) to §330.459(b) to ensure that all the permitting requirements for an MSW facility are in one chapter to help improve the organization and clarity of this rule. The commission provides, in new §330.459(c), that if there is evidence of a release from a MSW unit, the executive director may require an investigation into the nature and extent of the release and an assessment of measures necessary to correct an impact to groundwater for situations where it may be impractical to remove all waste and waste residues. The commission moves the closure requirement in §330.282(c) to new §330.459(d) to gather all the closure requirements into one section.

The commission adopts new §330.461, Certification of Final Facility Closure. The commission moves the requirements of §330.253(e)(3) to new §330.461(a); §330.253(e)(7) to new §330.461(b); §330.253(e)(8) to new §330.461(c); and §330.253(e)(9) to new §330.461(d). In §330.461(c)(2), the commission adopts a new requirement to have an independent professional engineer certify that the final facility closure has been completed in accordance with the approved closure plan. The commission adopts this requirement to ensure that the owner or operator closes the facility following the plan and to provide a date certain for when the executive director considers the facility closed. The commission adds §330.461(c)(3) to have the owner or operator of a facility that does not require post-closure care submit a voluntary revocation request under §305.67 for a permit or under §330.71 for a registration with the closure completion certification. MSW registrations and permits are typically valid until the registration or permit is cancelled or revoked. Therefore, to ensure that the commission does not continue to have an inactive registration or permit for a facility that has been closed the commission adopts this requirement. The remainder of the requirements are moved without substan-

tive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.463, Post-Closure Care Requirements, and moves the requirements of §330.254 to this section. Throughout this section the commission changes the term "landfill" to "waste management unit" subject to post closure to encompass other solid waste management units. The commission adopts this change to clarify the scope of MSW facilities that are subject to post-closure care. In §330.463(b)(1), the commission changes "Immediately upon completion of final closure. . ." to "After P.E. certification of the completion of closure . . ." to provide a date certain for when post-closure care begins. The remainder of the requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.465, Certification of Completion of Post-Closure Care, and moves the requirements of §330.256 to this section. The commission adds §330.467(b) to have the facility owner and operator submit a voluntary revocation request under §305.67 for a permit or under §330.71 for a registration with the post-closure care completion certification. MSW registrations and permits are typically valid until the registration or permit is cancelled or revoked. Therefore, to ensure that the commission does not continue to have an inactive registration or permit for a facility that has completed post-closure care, the commission adopts this requirement. The remainder of the requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

Throughout Subchapter L the commission adds the phrase "cost estimate" to the titles of §§330.503 - 330.509 and to the language in §330.501 to reflect the subject matter contained in the subchapter and to distinguish Subchapter L from Subchapter K.

The commission adopts new §330.501, Applicability. The commission moves the requirements of §330.280 to this section. The commission modifies this section to apply only to those facilities that are required to have financial assurance. Only facilities required to acquire and maintain financial assurance are required to use cost estimates, therefore, the commission adopts this change to clarify the scope of who is subject to Subchapter L. Section 330.282(b)(2) required any MSW processing facility to establish financial assurance for closure. The commission deletes this requirement and replaces it with the requirement in §330.501 that only those facilities required to have financial assurance are subject to Subchapter L. The commission adopts this change because it is unnecessary for facilities that are not required to have financial assurance to provide a closure cost estimate.

The commission adopts new §330.503, Closure Cost Estimates for Landfills. Rule language in new §330.503 clarifies the current practice of basing the closure cost estimate for a landfill on the largest waste fill area that could potentially be open in a year along with those areas in which waste has been placed but final cover has not been installed. This new language assures adequate financial assurance is in place to close areas used for waste placement as the landfill develops across the site without requiring owners and operators to provide financial assurance for the undeveloped portion of the property. The commission moves the requirements of §330.253(d)(6) and §330.281 to this section. In §330.503(a)(3), the commission deletes language related to the time frame for submitting revised financial assurance documents that reflect reductions in closure cost estimates. This requirement is deleted because it is unnecessary. The remainder of the requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.505, Closure Cost Estimates for Storage and Processing Units. The commission moves the requirements of §330.282 to this section with the following changes. The commission moves the closure requirements from §330.282(c) to §330.459(c) to better organize the rule by incorporating all the closure requirements into one section. Section 330.282(b)(2) required any MSW processing facility to establish financial assurance for closure. The commission deletes this requirement and replaces it with the requirement in §330.501 that only those facilities required to have financial assurance are subject to Subchapter L. The commission adopts this change because it is unnecessary for facilities that are not required to have financial assurance to provide a closure cost estimate.

The commission adopts new §330.507, Post-Closure Care Cost Estimates for Landfills. The commission moves the requirements of §330.283 to this section. In §330.507(a)(3), the commission deletes language related to the time frame for submitting revised financial assurance documents that reflect reductions in closure cost estimates. This requirement is deleted because it is unnecessary. The remainder of the requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.509, Corrective Action Cost Estimate for Landfills. The commission moves the requirements of §330.284 to this section. In §330.509(a)(2), the commission deletes language related to the time frame for submitting revised financial assurance documents that reflect reductions in closure cost estimates. This requirement is deleted because it is unnecessary. The remainder of the requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.541, Applicability, to specify the applicability requirements of Subchapter M. The commission establishes that this subchapter applies in accordance with the conditions specified in §330.1.

The commission adopts new §330.543, Easements and Buffer Zones. The commission copies the requirements of §330.121, Easements and Buffer Zones, to new §330.543(a) to establish that easement protection applies to all MSW facilities. This landfill requirement was applied to storage and processing facilities through reference. The commission adopts subsection (a) to

clarify that the requirement for easement protection applies to all MSW facilities and copies the requirement for easements into Subchapter M to better organize the chapter by having the easement requirements in one section. The commission moves the requirement in §330.408(4) and the requirement in §330.121(b) to new §330.543(b)(1) without changes. The commission removes the incorrect exception from the 50-foot buffer zone requirement for PBRs. The TCEQ's Municipal Solid Waste Permits Section held a series of public outreach meetings to gather comments to identify aspects of the MSW program that the general public and the solid waste industry viewed as needing attention. The commission received widespread input from the public that the 50-foot buffer zone requirement for landfills was inadequate. As a result of this input, the commission adopts new §330.543(b)(2) to establish a 125-foot buffer zone around all new Type I MSW landfills, vertical or lateral expansions of existing Type I landfills, and existing Type IAE landfills that subsequently no longer qualify for the arid exemption based on the conditions specified in new §330.5(b)(1). Additions have been made to the proposed rule to clarify how the new buffer zone requirement applies to expansions of permitted landfills. The increased landfill buffer zone requirement is intended to afford ready access for emergency response, maintenance, and monitoring activities; greater protection from windblown waste and odors; and provide better control of site drainage and sediment transport within an overall facility boundary. Based on having less potential to impact the public, the new buffer zone will not apply to Type IAE, Type IV, or Type IVAE landfills. The commission adds a new requirement in §330.543(b)(3) to allow an alternative buffer zone if the buffer zone required by subsection (b)(2) is not feasible. The commission adopts this provision to provide flexibility to the owners or operators who must comply with this section.

The commission adopts new §330.545, Airport Safety. The commission moves the requirements of §330.300 to this section; and §330.408(6) to new §330.545(a). The commission adds requirements in §330.545(a), from proposal, for owners or operators of vertical expansions to existing landfills within the distances stated to provide a bird hazard demonstration. The commission adds requirements in §330.545(b), from proposal, for owners or operators of vertical expansions within the distances stated to notify the affected airport and the Federal Aviation Administration. In §330.300(c), the commission deletes the requirement to show the distance from an airport as part of a permit transfer because a permit transfer does not change the relationship of the facility to an airport. The commission revises the notification and evaluation distance requirement of landfills from airports in §330.545(b) and (d) to reflect current federal requirements related to small general service airports.

The commission adopts new §330.547, Floodplains. The commission moves the requirements of §330.56(f)(4)(B)(iii) to new §330.547(a). Section 330.56(f)(4)(B)(iii) did not allow disposal and treatment facilities to be located in a floodplain. However, the commission revises this provision to only apply to disposal operations consistent with former §330.66(d)(6), which allowed liquid waste processing facilities to be located in a 100-year floodplain if the owner or operator can demonstrate that the facility can prevent washout of contaminants. Additionally, the commission moves the requirement in §330.66(d)(6) to §330.547(c) and expands it to include all MSW storage and processing facilities. The commission moves §330.301 and §330.408(1) to new §330.547(b) and moves the requirement to submit a demonstration that the unit will not restrict the flow of a 100-year flood, reducing the temporary storage water capacity of the floodplain or resulting in the washout of solid waste, to the application requirements of §330.63(c). The commission moves the requirement in §330.51(b)(4)(C) to new §330.547(c) without changes.

The commission adopts new §330.549, Groundwater. The commission moves the requirements of §330.408(5) to new §330.549(a) and changes "landfill mining operations" to "municipal solid waste facility." The commission adopts this requirement to make it clear that MSW facilities must comply with Chapter 213, Edwards Aquifer. The commission adds §330.549(b) to reference the requirements of §335.584(b)(1) and (2) for MSW Type I landfill facilities managing Class 1 industrial solid waste that are located over relatively permeable soil strata or regional aquifers.

The commission adopts new §330.551, Endangered or Threatened Species. The commission copies the requirements of §330.129, Endangered Species Protection, to new §330.551(a) to establish that endangered or threatened species protection applies to all MSW facilities. The commission moves the requirements of §330.53(b)(13)(B) and §330.408(3)(B)(iii) to new §330.551(a); and §330.53(b)(13)(A) to new §330.551(b).

The commission adopts new §330.553, Wetlands. The commission moves the requirements of §330.302 and §330.408(3) to new §330.553(b). The commission adds "a permit major amendment or a registration" to subsection (b). The commission adds "a permit major amendment" to this subsection to ensure that the owner or operator of a proposed facility expansion into wetlands performs the demonstrations in §330.553(b)(1) - (5). Additionally, the commission adds "registration" to subsection (b) to provide flexibility for owners and operators of registered facilities proposing to locate in wetlands.

The commission adopts new §330.555, Fault Areas, and moves the requirements of §330.204 and §330.303 to this section without change except in subsection (a). In §330.555(a), the commission deletes the requirement to submit an alternative setback demonstration as part of a permit transfer request because a permit transfer does not change the relationship of the facility to the underlying geology.

The commission adopts new §330.557, Seismic Impact Zones, and moves the requirements of §330.304 to this section with changes. In §330.557, the commission deletes the requirement to submit a demonstration that the facility is designed to resist the maximum horizontal acceleration in lithified earth material for the site as part of a permit transfer because a permit transfer does not change the relationship of a facility to the underlying geology.

The commission adopts new §330.559, Unstable Areas, and moves the requirements of §330.305 to this section with changes. In §330.559 the commission deletes the requirement to submit a demonstration regarding unstable areas for the site as part of a permit transfer because a permit transfer does not change the relationship of a facility to the underlying geology. The remaining requirements are moved without changes.

The commission repeals §330.561, Purpose and Scope, and moves the requirements of this section to new §330.631.

The commission adopts new §330.561, Coastal Areas, to refer to the requirements of §335.584(b)(3) and (4) that prohibit MSW Type I landfill facilities from managing Class 1 industrial solid waste on barrier islands, peninsulas, or within 1,000 feet of an area subject to active coastal shoreline erosion unless the owner

or operator prevents erosion from occurring. The commission adds this requirement to ensure that waste is not washed out of the landfill due to storm events.

The commission repeals §330.562, Definitions of Terms and Abbreviations, and moves the requirements of this section to new §330.633. The commission deletes definitions for implementation, planning, provide for, and variance from §330.562 as these words are in common and normal usage and need not be specifically defined within this chapter. The commission has deleted the definition of state solid waste management plan from §330.562 and all subsequent references in Subchapter O as the requirement for this plan was repealed by House Bill 7, 78th Legislature, 2003, 3rd Called Session. This statutory change took effect January 11, 2004.

The commission repeals §330.563, Regional and Local Plan Requirements, and moves the requirements of this section to new §330.643.

The commission adopts new §330.563, Type I and Type IV Landfill Permit Issuance Prohibited, to incorporate the requirements of THSC, §361.122, Denial of Certain Landfill Permits, as established by the 77th Legislature, 2001, in subsection (a). This statutory change took effect September 1, 2001. The commission adopts new §330.563(b) to implement House Bill 1053, 79th Legislature, 2005.

The commission repeals §330.564, Coordination with Other Programs, and moves the requirements of this section to new §330.637.

The commission repeals §330.565, Public Participation Requirements for Solid Waste Plans, and moves the requirements of this section to new §330.639.

The commission repeals §330.566, Procedures for Regional and Local Plan Submission, Approval, and Distribution, and moves the requirements of this section to new §330.641.

The commission repeals §330.567, Financial Assistance for Regional and Local Plans, and moves the requirements of this section to new §330.645.

The commission repeals §330.568, Approved State, Regional, and Local Solid Waste Management Plans, and moves the requirements of this section to new §330.647.

The commission repeals §330.569, Regional Solid Waste Grants Program, and moves the requirements of this section to new §330.649.

The commission repeals §330.601, Purpose and Applicability, and moves the requirements of this section to §330.671.

The commission classifies the landfill mining activities of new Subchapter N as a Type IX facility since landfill mining is within the scope of energy and material recovery for beneficial use.

The commission adopts new §330.601, General Requirements. The commission moves the requirements of §330.403(7) to new §330.601(1); and §330.403(9) to §330.601(2). The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.602, Fees, and moves the requirements of this section to §330.673.

The commission repeals §330.603, Reports, and moves the requirements of this section to §330.675.

The commission adopts new §330.603, Variances. The commission moves the requirements of §330.404 to this section without substantive changes.

The commission repeals §330.604, Composting Refund, and moves the requirements of this section to §330.677.

The commission adopts new §330.605, Relationship with Operating Landfills. The commission moves the requirements of §330.405 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.607, relating to Air Quality Requirements. The commission moves the requirements of §330.406 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.609, Operational Requirements and Design Criteria. The commission moves §330.409(2) and §330.410(a) to new §330.609(1); §330.409(3) to new §330.609(2); §330.409(6) to new §330.609(3); and §330.409(9) - (16) to new §330.609(4) - (11). The commission moves the requirement of §330.411 to §330.609(1)(D) to require an owner or operator of a landfill mining operation to submit liner construction certifications required by new §330.341. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.611, Required Reportings. The commission moves section §330.414(2) and (3) to new §330.611(1) and (2). The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.613, Sampling and Analysis Requirements for Final Soil Product. The commission moves the requirements of §330.417 to this section.

The commission adopts new §330.615, Final Soil Product Grades and Allowable Uses. The commission moves the requirements of §330.418 and §330.419 to this section. In §330.615(b), the commission changes the requirement that test results be conducted according to the agency's current QA program plan or the plan specified in the facility's authorization to a requirement that testing be conducted according to Subchapter F of this chapter. The former rules referred to a guidance document, but since the commission is adopting rules for QA in this rulemaking, the commission establishes that these QA rules be used throughout this chapter.

The commission restructures Subchapter O to streamline regional solid waste management plan preparation and adoption

and add flexibility to the COGs and local governing bodies in implementing their regional and local solid waste management plans. The commission streamlines the requirements for the regional and local solid waste management plan while maintaining the content consistent with THSC, Chapter 363, Subchapter D. Throughout this subchapter, the commission changes "planning commission" to "council of governments" to follow the definition used in THSC, Chapter 363, Subchapter D.

The commission adopts new §330.631, Purpose and Scope. The commission moves §330.561(a) to new §330.631(b); and §330.561(b)(1) and (2) to new §330.631(c)(2) and (3).

The commission adopts new §330.633, Definitions of Terms and Abbreviations. The commission moves the requirements from §330.562 to this section. The commission deletes the definitions for commission, commissioners, and executive director because these words are defined in 30 TAC Chapter 3. The commission deletes definitions for implementation, planning, provide for, and variance from §330.562 as these words are in common and normal usage and need not be specifically defined within this chapter. The commission has deleted the definition of state solid waste management plan from §330.562 and all subsequent references in Subchapter O as the requirement for this plan was repealed by House Bill 7, 78th Legislature, 2003, 3rd Called Session. This statutory change took effect January 11, 2004.

The commission adopts new §330.635, Regional and Local Solid Waste Management Plan Requirements. The commission amends the required contents of regional and local solid waste management plans to more closely match the requirements of THSC, §363.064. The result will streamline regional and local solid waste management plan submittals, expedite their review and approval, and add flexibility to regional solid waste management programs implementing the plans. The change will also help ensure that when adopted by commission rule the contents of regional and local solid waste management plans are consistent with this chapter.

The commission adopts new §330.637, Coordination with Other Programs. The commission moves the requirements from §330.564 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.639, Public Participation Requirements for Solid Waste Plans. The commission moves the requirements from §330.565 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.641, Purpose and Applicability. The requirements of this section are included in the registration by rule requirements of new §330.9(l) and (m).

The commission adopts new §330.641, Procedures for Regional and Local Plan Submission, Approval, and Distribution. The commission moves the requirements from §330.566 to this section. The remaining requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals §330.642, Annual Reports. The requirements of this section are included in the registration by rule requirements of new §330.9(l) and (m).

The commission repeals §330.643, Annual Registration Fees. The requirements of this section are included in the registration by rule requirements of new §330.9(l) and (m).

The commission adopts new §330.643, Regional and Local Solid Waste Management Implementation Plan Guideline Requirements. The commission moves the requirements from §330.563 to this section. The commission adds §330.643(a)(3)(O) and §330.635(b)(3)(L) to require the COGs and, if applicable, other local governments to identify the process used to evaluate whether a proposed application complies with regional and local plans.

The commission adopts new §330.645, Financial Assistance for Regional and Local Plans. The commission moves the requirements from §330.567 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.647, Approved Regional and Local Solid Waste Management Plans. The commission moves the requirements from §330.568 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.649, Regional Solid Waste Grants Program. The commission moves the requirements from §330.569 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.671, Purpose and Applicability, and moves the requirements of §330.71(h) and (i) and §330.601 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.673, Fees, and moves the requirements of §330.71(h) and §330.602 to this section. The commission adopts new §330.673(a)(7)(B) regarding charging federal facilities tipping fees only for the amount necessary to reimburse TCEQ MSW regulatory activities. Federal facilities are required by Resource Conservation and Recovery Act (RCRA), §6001, to pay reasonable service charges required for the implementation of state RCRA programs. Federal facilities are exempt from the payment of state taxes. Tipping fees charged federal facilities for disposal in landfills owned and operated by the federal facility must be based on services provided and may not include state taxes.

The commission adopts new §330.675, Reports, and moves the requirements of §330.603 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.677, Composting Refund, and moves the requirements of §330.71(h) and (i) and §330.604 to this section. The requirements are moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission repeals Subchapter R (§§330.825 - 330.830) in its entirety. This subchapter establishes procedures for managing the Waste Tire Recycling Fund. The statutory authority for this program was repealed in 1997 and the commission no longer has a reimbursement program. Therefore, the provisions of Subchapter R are no longer needed.

The commission adopts amendments to Subchapter S, §§330.890 - 330.897. The changes are not substantive; however, the commission does change the formatting and modify the rule language to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission moves the requirements of §330.255, Post-Closure Land Use, for permitted landfills in post-closure care to Subchapter T to promote consistency and clarify the requirements for the use of land adjacent to or over closed MSW landfills or dumping areas. The commission changes the term "public hearing" to "public meeting" throughout Subchapter T to implement House Bill 1609, 79th Legislature.

The commission amends §330.951, Definitions, by deleting the following definitions: garbage, hazardous waste, industrial solid waste, municipal solid waste, and rubbish. These terms are defined in new §330.3.

The commission adds the following definitions to §330.951: authorization, dumping area, post-closure care, post-closure care landfills, and registration.

The commission revises the following definitions in §330.951: alteration and closed municipal solid waste landfill.

The commission amends §330.952, Applicability and Exemptions, by deleting local government officials and licensed professional engineers from the list of persons affected by these rules. Subchapter T applies to persons owning, leasing, or developing property having a closed MSW landfill except as noted in §330.952(b). No other substantive changes are made except to modify the rule language to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission amends §330.953, Soil Test Required before Development. No substantive changes are made to the requirements; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform to Texas Register requirements and agency guidelines.

The commission amends §330.954 by changing the title to Development Permit, Development Authorization, and Registration Requirements, Procedures, and Processing. The commission amends §330.954(a)(1) to apply to a dumping area as defined in §330.951 to more fully describe when a development permit will be required. The commission amends §330.954(a)(1)(A) to account for the new dumping area as defined in §330.951 to more fully describe when a development permit will be required. The commission deletes §330.954(a)(1)(B), which exempts enclosed structures that are adjacent but not built over a waste disposal area. The commission adopts new §330.954(a)(2) and (3) to further describe scenarios when an owner will need to submit a development permit for construction of an enclosed structure over a closed landfill or dumping area based on whether the owner has determined the waste boundaries within the property. The commission moves §330.954(a)(2) - (6) to §330.954(a)(4) - (8). The commission moves the application fee requirement of §330.954(a)(7) to §330.59(h)(2); and establishes the requirement of §330.954(a)(8) for owners and operators of permitted MSW facilities to submit a permit modification or amendment when adding an enclosed structure under new §330.954(c). The commission adopts new §330.954(c) to describe scenarios when an owner will need to submit a development permit modification or amendment application for construction of an enclosed structure over a permitted, closed landfill. The commission reletters §330.954(c) to §330.954(d). The commission moves §330.955(a) and (b) to new §330.954(e)(1) and (2); and §330.954(a)(1)(A) to new §330.954(e)(3). The commission adopts new §330.954(e)(4) to require that requests to disturb the final cover of closed landfills or dumping areas be submitted at least 30 days prior to the proposed activity to allow commission staff time to review the requests. Changes are made to §330.954(b) to implement House Bill 1609, 79th Legislature, to change the term "public hearing" to "public meeting," and to make public meetings discretionary.

The commission amends §330.955, Miscellaneous, by moving subsections (a) and (b) to new §330.954(e)(1) and (2). The commission reletters §330.955(d) to new §330.955(a); and moves §330.255(e) to new §330.955(b). The commission revises §330.955(c) to allow small amounts of solid waste removed from a closed MSW landfill to be redeposited in the closed MSW landfill, as approved by the executive director on a case-by-case basis. The added flexibility will simplify soil testing at suspected closed MSW landfills while maintaining environmental protectiveness. The commission moves §330.255(c)(4) and (5) to new §330.955(d) and (e). The commission adopts new §330.955(f) - (h) to specify standards for waste coming into contact with waste, backfilling and compaction when waste is removed, and prohibiting waste being left exposed overnight.

The commission amends §330.956 by changing the title to Application for Proposed or Existing Construction Over a Closed Municipal Solid Waste Landfill Unit, General Requirements. The commission moves the requirements of §330.956(c) to new §330.956(b)(2); and §330.956(d) - (g) to new §330.57(e) - (h); and §330.956(g)(5) to new §330.956(d). The commission adopts these moved provisions for better organization and readability by grouping similar requirements together. The commission adds new §330.956(c) to instruct an owner to submit a permit application following the format specified in new §330.57(e) - (h). This will eliminate the redundancy of repeating the application format in both §330.57 and §330.956.

The commission amends §330.957 by changing the title to Contents of the Development Permit and Workplan Application,

to clearly describe the items that must be part of a permit application for development over a closed MSW landfill. The commission moves the requirements of §330.957(a)(1) and (2) to new §330.57(g); §330.957(a)(3) to new §330.957(b)(1); §330.255(b) to new §330.957(b)(2)(A) - (C); §330.255(d) to new §330.957(b)(2)(D); §330.957(a)(4) to new §330.957(c); §330.957(b) - (h) to new §330.957(d) - (j); §330.957(j) - (t) to new §330.957(k) - (u); and §330.255(f)(4) - (6) to new §330.957(j)(1)(D) - (F). The commission removes the requirement of §330.957(i) to submit an aerial photograph as part of an application for development over a closed MSW landfill. The aerial photograph is not necessary for the executive director to conduct an application review. The commission amends §330.957(q)(1)(A) to require a development permit for an on-site, permanent, enclosed structure that is located over a closed MSW landfill or a dumping area with determined boundaries.

The commission amends §330.958 by changing the title to Construction Plans and Specifications, to more accurately reflect the contents of the section. To reduce reporting requirements the commission removes the requirement that as-built construction plans and specifications be submitted to the executive director. These plans must still be maintained at the permitted development and be available for inspection.

The commission amends §330.959 by changing the title to Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit. The commission adopts new §330.959(a) to refer to the requirements of §330.956, moves the requirements of §330.959(2) and (3) to §330.959(b)(1) and (2); adopts new §330.959(b)(3) to refer to the requirements of §330.957(f), (g), and (k)(3); and moves the requirements of §330.959(4) - (6) to §330.959(b)(4) - (6).

The commission repeals §330.960, Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit, and moves the requirements of this section to new §330.961.

The commission adopts new §330.960, Contents of Authorization Request to Disturb Final Cover Over a Closed Municipal Solid Waste Landfill for Non-enclosed Structures.

The commission adopts the repeal of §330.961, Notice to Real Property Records and moves the requirements of this section to new §330.962.

The commission adopts new §330.961, Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit or a Municipal Solid Waste Landfill in Post-Closure Care. The commission adds the new requirement, in §330.961(b)(2)(A), that the owner or operator shall notify the executive director and take action in accordance with §330.371(3) whenever methane gas levels exceeding the limits specified in §330.961(b)(1) are detected.

The commission has repealed §330.962, Notice to Buyers, Lessees, and Occupants, and moves the requirements of this section to new §330.963.

The commission adopts new §330.962, Notice to Real Property Records. The commission moves the requirements of §330.961 to this section.

The commission has repealed §330.963, Lease Restrictions, and moves the requirements of this section to new §330.964.

The commission adopts new §330.963, Notice to Buyers, Lessees, and Occupants and moves the requirements of §330.962 to this section.

The commission adopts new §330.964, Lease Restrictions, and moves the requirements of §330.963 to this section.

The commission adopts a new Subchapter U. The commission is adopting a new standard permit to authorize air emissions at MSW landfill sites and transfer stations based on statutory requirements of THSC, Chapter 382, and a comprehensive evaluation of air quality emissions and their potential effects. This standard permit will provide a streamlined authorization process and will qualify as the new source review (NSR) air authorization needed for most landfill sites and transfer stations, and it will include air permitting requirements for the landfill, common support equipment, and associated facilities located at the site. For ease of reference and use by landfill owners and operators, this new standard permit is located in new Subchapter U in this chapter and replaces the standard permit for air emissions from MSW landfills in 30 TAC §116.621, Municipal Solid Waste Landfills.

The standard permit will enable landfill owners and operators to use a single authorization and certify federally enforceable emission limits and parameters for the facilities typically found at an MSW landfill site or transfer station.

The following facilities are typically found at MSW landfill sites and are authorized by PBR and standard permits: 30 TAC §106.181, Used-Oil Combustion Units; §106.183, Boilers, Heaters, and Other Combustion Devices; various miscellaneous sources and recycling equipment that meet the requirements of §106.261 Facilities (Emission Limitations) or §106.262, Facilities (Emissions and Distance Limitations); §106.433, Surface Coat Facility; §106.436, Auto Body Refinishing Facility; §106.451, Wet Blast Cleaning; §106.452, Dry Abrasive Cleaning; §106.454, Degreasing Units; §106.472, Organic and Inorganic Liquid Loading and Unloading; §106.496, Air Curtain Incinerators; §106.512, Stationary Engines and Turbines; §116.617, Standard Permits for Pollution Control Projects; Standard Permit for Temporary Rock Crushers; and Air Quality Standard Permits for Electric Generating Units. Certification under the standard permit in this chapter will enable the landfill owner/operator to construct and operate facilities covered under these and any other PBRs and standard permits.

Sites that are subject to 40 CFR Part 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills, 30 TAC Chapter 113, Subchapter D, Division 1, Municipal Solid Waste Landfills, or 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, Subpart AAAA, are also subject to the Title V federal operating permits major source program. These sites are required to obtain a site operating permit or a general operating permit (GOP). To address EPA concerns about inclusion of case-by-case NSR authorizations in GOPs, the GOP qualification criteria is changed to only allow sites authorized by PBRs and/or standard permits to operate under the GOPs. This standard permit will allow more sites to be authorized by a standard permit authorization and maintain their GOP eligibility.

The commission adopts new §330.981, Effective Date, to state that the requirements of the new standard permit will become effective on September 1, 2006. This will allow time for existing landfills to be certified before the conditions of the standard per-

mit will be enforced. The commission changed the title of this section to more clearly state its purpose.

The commission adopts new §330.983, Definitions, to include terms that are typically used in the rules of the commission that regulate emissions of air contaminants. Because new Subchapter U is an authorization to emit air contaminants and it is incorporated into Chapter 330, it is necessary and appropriate that most of these terms be defined as they are in the air rules.

The definitions in §330.983(2) - (4) classify MSW landfills into three categories for purposes of this standard permit. An MSW landfill qualifies for Category 1 if it has a design capacity less than 2.5 million megagrams (MMg) or 2.5 million cubic meters (m^3). A Category 2 MSW landfill has a design capacity greater than 2.5 MMg and 2.5 million m^3. These larger MSW landfills will continue to qualify for the Category 2 classification until the uncontrolled non-methane organic compound (NMOC) emission rate exceeds 50 megagrams per year (Mg/yr). The largest MSW landfill that may be authorized by the standard permit is classified as Category 3, which has a design capacity greater than 2.5 MMg and 2.5 million m^3, and a calculated uncontrolled NMOC emission rate greater than or equal to 50 Mg/yr. These categories were determined based on possible applicability and control requirements of 40 CFR Part 60, Subpart WWW and 40 CFR Part 63, Subpart AAAA. Type IV and Type IVAE landfills do not accept household wastes, so these landfills would not be subject to Subpart WWW by definition; however, these sites could use this Subchapter U authorization if there were other operations present that could not qualify under §106.534, Municipal Solid Waste Landfills and Transfer Stations. In response to public comment, the commission has added language to the definitions indicating that these landfills could also be subject to 30 TAC Chapter 113, Subchapter D, Designated Facilities and Pollutants.

In §330.983(6), the definition of the term "facility" under Chapter 330 refers to the entire MSW landfill site, but as the term applies to air emissions, it is defined in THSC, §382.002(6) as a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility. Because Chapter 330 has the same definition for "site" and "facility" and in the commission's air rules a site may contain many facilities, it is necessary to define "site" in paragraph (12) so that it is understood that it could contain additional "sources" of emissions in addition to the landfill. Also, because of the possible conflict in the use of the term "process" between the two chapters, it is necessary to define that term in paragraph (9) as it applies to air emissions and not landfill operations.

Subpart WWW contains definitions specific to landfill operations and air emissions, so the commission is adopts a definition of "modification" in paragraph (7).

In §330.983(5), (8), (10), (11), (13), (14), and (15), the terms: construction; modification of existing facility; project; receptor; source; waste solidification; and waste stabilization were not previously defined in the Chapter 330 rules and have unique meanings when applied to air emissions.

The definitions in the proposed version of §330.983 contained references to 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. In response to public comment, the commission is not adopting the reference language and will use the text of the definition only. The references to Chapter 116 are redundant.

The commission adopts new §330.985, Applicability and Exceptions, which authorizes air emission sources and facilities typically found at MSW landfill sites and transfer stations. Subsection (a) authorizes air emissions from landfills and transfer stations and is intended to authorize not only the facilities associated with waste handling and disposal, but all ancillary equipment that may emit air contaminants and may be co-located at the same site. In response to public comment, the commission has added language stating that individual authorizations under the standard permit are not subject to public notice and comment or contested case hearing opportunity.

Section 330.985(b) requires owners and operators to comply with all applicable laws and rules of the federal and state governments, and any applicable commission rules.

Section 330.985(c) specifies that an owner or operator may claim this standard permit for the operation, construction, or modification of an MSW landfill including Type I (MSW), Type IAE, Type IV, and Type IVAE facilities as defined in §330.5, Classification of Municipal Solid Waste Facilities, except as specified in subsection (d) of this section.

Section 330.985(d)(1) requires that a case-by-case air permit under Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, be obtained for any new sources or modifications that exceed the major source thresholds under federal NSR regulations for prevention of significant deterioration (PSD) review or nonattainment (NA) review. PSD review at a typical MSW landfill is triggered when there are emissions of carbon monoxide, sulfur dioxide, nitrogen oxides, or volatile organic compounds from all point sources at the MSW landfill site that exceed 250 tons per year (tpy).

The NA thresholds that trigger review vary based on the location (county) in which the MSW landfill site is located. The following table contains the current one-hour and eight-hour NA thresholds.

Figure: 30 TAC Chapter 330--Preamble

If these thresholds are exceeded for any new project, a NA review is required. A project is considered the construction or the modification of a facility under the same authorization. If PSD or NA review is required, the MSW landfill site would be ineligible for this standard permit and must obtain authorization under Chapter 116, Subchapter B, New Source Review Permits.

Section 330.985(d)(2) contains activities that would not be authorized by this standard permit. These activities are incineration (other than flares or control of landfill gas), composting, rock crushers that are not used exclusively as temporary installations for landfill cell construction, similar construction plants, and MSW landfill sites that are authorized to accept 51% or more by weight or volume of Class 1 industrial nonhazardous waste. Composting can be authorized under Chapter 332, Composting, and needs to be separately registered since additional review is required by the TCEQ's Waste Permits Division. Rock crushers not used exclusively for cell construction, concrete batch plants, asphalt concrete plants, and similar construction plants, must obtain a separate air authorization via PBR, standard permit, or case-by-case permit. The primary air contaminant of concern for these facilities is particulate matter (PM) or volatile organic compounds, similar to those emissions expected from a typical MSW landfill site. The emission contributions of these activi-

ties were not considered during the protectiveness review for an MSW landfill because a survey of MSW landfill sites did not indicate that these types of facilities are typically located at MSW landfill sites.

Landfill records indicate that there are existing landfills permitted under the MSW state rules that are authorized to accept in excess of 20% Class 1 industrial nonhazardous waste. In order to allow these landfills to qualify for this standard permit, a landfill gas collection and control system (GCCS) will be required. However, a landfill that contains 51% or more Class 1 industrial nonhazardous waste by weight or volume no longer has a majority of MSW derived from households. In these cases, landfill air emissions require authorization under Chapter 116, Subchapter B.

The commission adopts new §330.987, Certification Requirements, which contains general requirements of this standard permit. Submitting a certification has a benefit in that it removes the need for the site owner or operator to submit the standard permit registration paperwork, fees, and waiting for permit review and approval before construction can start. Subsection (a) exempts Type IV landfills from the certification requirements of this section. Since Type IV landfills are not permitted to accept household wastes, they do not meet the definition of an MSW landfill as provided in Subpart WWW and are not subject to PSD or NA review. As a result, their NMOC emissions will be insignificant, and certification is unnecessary.

Section 330.987(b) includes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the Texas Clean Air Act (TCAA) and the conditions precedent to claiming the standard permit. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control program having jurisdiction over the site into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

Section 330.987(c) states that certifications under this standard permit will be valid for a period of ten years. This is the maximum allowed under the TCAA and provides a reasonable time period to accommodate the growth of a landfill without triggering federal requirements earlier than appropriate, and is consistent with air permit renewal schedules throughout Chapter 116. The landfill owner or operator has the option to submit information at the original certification that indicates the landfill will not trigger federal requirements for a period longer than ten years. While the certification will expire after ten years, the owner or operator may renew the certification for an additional ten years by submitting a notice that the landfill conditions are consistent with information submitted at the original certification. No additional fees or technical data is required. Such a letter will renew the certification and attest that the conditions relating to the triggering of federal review have not changed.

When submitting landfill information covering a longer period than the ten years, if the landfill would require a GCCS under 40 CFR Subpart WWW some time after the initial ten years, it will be necessary for the owner or operator to submit the GCCS design plan for approval with the initial certification. A landfill that triggers the 40 CFR Subpart WWW GCCS requirement during the initial ten-year certification is also be required to submit the design plan with the initial certification.

Section 330.987(d) requires that two copies of the certification be submitted to the Waste Permits Division in Austin (one for the Waste Permits Division and one for the Air Permits Division), one copy to the regional office, and one copy to any local air pollution control program with jurisdiction. The commission will require documentation in the certification demonstrating compliance with the conditions of the standard permit. The commission will create a guidance document to assist the landfill owner or operators in determining the emission estimates for the various activities at the landfill. This guidance document will include information on the basis of emission estimates, quantification of emissions, description of equipment, and how all conditions of the standard permit will be met.

Section 330.987(e) requires existing landfill owners or operators to submit a certification if the landfill has been modified since its last authorization. Landfill owners or operators with an authorization under §116.621 that require additional authorization for existing support activities should also submit a certification. Existing permit holders will not be required to submit an entire application, only the new certification requirements. Owner or operators of new landfills are required to submit a certification at least 120 days prior to construction. Modifications to existing landfills that change the category and associated federal requirements must be submitted within 60 days after the change. In response to public comment, the commission has modified the language in subsection (e)(1) and (2) to refer to certifications submitted by "owners or operators."

Section 330.987(f) provides numerous mechanisms for the construction of any new facility that may emit air contaminants, or changes to any existing facility. If the changes do not make the MSW landfill site ineligible for authorization under the standard permit, the owner or operator may independently claim a PBR or a standard permit. Under the requirements of Chapter 116, Subchapter B, New Source Review Permits these independently claimed PBRs and standard permits outside of the Subchapter U authorization must be incorporated at the next certification renewal, amendment, or modification of this Subchapter U authorization. The PBR and standard permit emissions are incorporated by adding their emissions to the current Subchapter U authorization. The new total emissions are now required to meet all the conditions of this standard permit. Once incorporated into the Subchapter U authorization, the PBR and standard permit authorizations will be voided. The commission will require all forms, fees, and review requirements of Chapter 106, Permits by Rule, or Chapter 116 if a PBR or standard permit is independently claimed. However, if a PBR or standard permit is not independently claimed and is to be included in the certification under this subchapter, no fees or additional forms are required. If the changes are less than five tpy and the site is located in an NA area (consistent with the federal NA netting requirements for major sources as defined in §116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions) or 25 tpy if the site is located in an attainment area consistent with the PSD significance threshold, the Chapter 330, Subchapter U permit certification may be updated on the next certification anniversary date. In response to public comment, the commission has modified the language in subsection (f)(2)(A) and (B) to specify that updated certifications must be submitted when constructing new facilities resulting in emission increases. The one-year certification submittal requirement applies to increases less than five tpy or 25 tpy depending on whether the landfill site is in an NA area. The 30-day certification submittal requirement applies to increases greater than or equal to five or 25 tons, also dependent

on the attainment status of the landfill's location. The commission is making the clarification in §330.987(f)(2)(B)(ii) and (C)(ii) to state "greater than or equal to" when referencing emission thresholds.

If the MSW landfill site is not considered an existing major site under PSD or NA thresholds, and the changes are greater than or equal to five tpy (when located in an NA area), or 25 tpy (when located in an attainment area), the standard permit certification may be updated within 30 days of the change. If the MSW landfill site is an existing major site under PSD or NA thresholds, and the changes are greater than or equal to five tpy (when located in an NA area), or 25 tpy (when located in an attainment area), the standard permit certification may be updated 30 days prior to the change. This preconstruction certification update must also include any appropriate netting demonstrations to show that a major modification review under NA or PSD is not triggered.

The commission adopts new §330.989, General Requirements, which contains, in subsection (a), requirements for all standard permits that appear in Chapter 116. Subsection (a) also requires facility construction or modification to comply with provisions of the Federal Clean Air Act relating to new stationary sources, hazardous air pollutants, the mass emissions cap and trade program in Chapter 101, Subchapter H, Emissions Banking and Trading, if applicable, and the applicable rules and regulations adopted under the TCAA and with the intent of the TCAA. In response to public comment, the commission has added a reference to 30 TAC Chapter 113, Subchapter D, as requirements applying to landfills.

Section 330.989(b) requires that all representations with regard to construction plans, operating procedures, and emission rates become conditions upon which the MSW landfill site is constructed and operated. The landfill certification must be updated if there are changes at the site.

The commission adopts new §330.991, Technical and Operational Requirements for all Municipal Solid Waste Landfill Sites. The commission evaluated several common facilities and their associated activities located at MSW landfill sites, and authorizes air emissions from these facilities in subsection (a). These facilities and activities include recycling, such as crushing glass, shredding or crushing aluminum, and light bulb crushing or wood chipping or mulching. Composting activities performed at landfills must meet the requirements of §330.7, Permit Required, and are not authorized under Chapter 330, Subchapter U. The commission is removing the 165-foot proposed setback for transfer stations. The commission evaluated additional information on these stations and determined a setback is not required. The accepted industry practice has the transfer station covered by a building with forced vertical ventilation.

Waste solidification/stabilization is authorized with restrictions to control PM and visible emissions. Waste solidification/stabilization emissions, based on limited data from recent permit applications, predicted high short-term emissions for PM using emission factors for fine PM materials from the EPA publication AP-42, *Compilation of Air Pollutant Emission Factors*. Using fine powdery materials (e.g., fly ash, cement kiln dust, hydrated lime, and fine sawdust) for mixing in waste solidification/stabilization operations at a landfill produced PM exceedances of the national ambient air quality standard. As a result, when handling these materials during loading/unloading, transporting, and mixing, they must be controlled so that no visible emissions are present. This is to ensure that the landfill will meet the PM limits of 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, and the national ambient air quality standard. To prevent the potential of adverse off-property PM impacts, control methods appropriate to fine PM control must be used to prevent dust from becoming airborne. These controls may include loading and storing in enclosed containers, and mixing and unloading under conditions where the materials cannot become airborne. This control is necessary in reducing the potential health hazard when these materials become airborne. In response to public comment, the commission is modifying the language in §330.991(a)(3)(B) to state that the EPA Method 22, visible emission test applies to site-generated emissions consistent with the requirements of §330.991(d)(1).

Under §330.991(a)(4), all facilities directly related to landfill cell construction, operation, and closures, including landfill gas emissions and associated capture and control equipment are authorized.

Section 330.991(a)(5) authorizes the use of spray mist systems for odor control at landfills. These systems are used to spray liquid chemicals that contain activated enzymes, odor neutralizers, or masking agents, in a vapor or fog form that may or may not react and neutralize airborne emissions from landfill waste. The commission received information from four manufacturers of deodorizing products, analyzed the information for health effects, and determined no adverse effects. As a result of this analysis, the commission has removed all restrictions, other than visible emissions restrictions, on the use of these products in spray mist systems.

The commission is modifying the language in §330.991(a)(6) to clarify that, with the exception of activities listed in §330.985(d)(2), any other facility that meets a PBR under Chapter 106 or a standard permit under Chapter 116, Subchapter F, may be included in the MSW landfill site certification. Even when added to the specific MSW landfill that was evaluated, the occurrence of these emissions is infrequent and low enough that there is not expected to be any adverse effects on human health and the environment. It should be noted that the use of a flare under §106.492, Flares, for the control of landfill gas will not satisfy the control requirements of new source performance standards Subpart WWW, because that subpart requires that the conditions of 40 CFR §60.18 be met.

Section 330.991(a)(7) specifies the requirements for leachate and landfill gas condensate handling activities. Leachate and landfill gas condensate may be recirculated back onto the landfill; however, the recirculation rate shall not exceed 100,000 gal/day. In addition, the recirculation of leachate and gas condensate should be performed in accordance with the requirements stated in §330.177, Leachate and Gas Condensate Recirculation. Air contaminant potential emissions resulting from leachate and landfill gas condensate recirculation were evaluated during the standard permit review process. Emissions for 1,2-dichloroethane, benzopyrene, benzene, chloroform, chlorophenol, dichloromethane, ethylbenzene, phenol, toluene, and vinyl chloride, were estimated using the emission factors in Table 8: Uncontrolled Default Concentrations of Substances in Leachate from "Municipal Solid Waste Landfills in National Pollutant Inventory" (referenced from White, P.R., Franke, M. and Hindle, P. 1995. Integrated Solid Waste Management: A Lifecycle Inventory). The worst-case scenario assumed that 100% of air contaminants are emitted to the air through leachate/gas condensate sprayed onto the landfill. Accordingly, leachate/gas condensate recirculation does not have routing emissions except for fugitives. An air quality modeling

analysis was performed to evaluate the potential effect of all emissions from a landfill. A leachate/gas condensate recirculation rate of 100,000 gal/day was used as a conservative input to the refined air dispersion model since the rates at most landfills are well under this figure. The model results indicated that the emissions from recirculation at this rate, along with the other emissions from the landfill, will not jeopardize human health and the environment. The commission believes that all MSW landfill sites should be able to comply with this recirculation rate since this is considered the worst-case scenario with high rainfall amounts. In addition, owners/operators have concurred that a leachate/gas condensate recirculation rate of 100,000 gal/day is a reasonable limit for a landfill. Leachate and gas condensate may also be stored in tanks with no restrictions. In addition, the MSW landfill site may dispose of leachate and gas condensate in evaporation ponds in accordance with Chapter 330, and the emissions are expected to be less than those for recirculation via spraying.

Section 330.991(a)(8) authorizes fuel tanks at the MSW landfill site. Most vehicles and engines at MSW landfill sites operate with diesel fuel, and kerosene may be occasionally used. Storage tanks and the dispensing of fuel are authorized. Minimal emissions are expected from diesel or kerosene storage and handling. Gasoline is also used in limited amounts at MSW landfill sites. This standard permit requires permanent gasoline storage tanks to be located at least 500 feet from any receptor. To minimize emissions, vapor balancing must be used when total annual throughput of gasoline for all tanks exceeds 20,000 gallons per year. A loading rate of 5,000 gallons per hour was reviewed because this represented the maximum typical pumping rate used by the tank trucks delivering fuel from bulk fuel distribution centers. Modeling of the loading losses from the filling of a bulk gasoline fixed roof storage tank venting to the atmosphere predicted that the gasoline vapor concentrations at a typical landfill property line would exceed the effects screening level (ESL) for gasoline. However, it is not expected that MSW landfill sites will use gasoline in these quantities since most of the landfill construction equipment was found to be diesel powered. This would represent the worst-case situation for modeling purposes due to the presence of benzene in gasoline. The fixed roof is typically used for storage tanks with capacities less than 25,000 gallons and is the worst-case emissions scenario. The commission determined that these predicted exceedances would be acceptable if they did not occur more than four times per year. Based on the modeling assumptions and filling scenarios, the 20,000 gal/yr throughput limit gives the MSW landfill site owner/operator the flexibility to fill the tanks as needed. No restriction on loading rate or frequency would be necessary if the vapors displaced from the gasoline storage tank being loaded were vented into the vapor space of the tank truck as loading occurs. Records indicating annual gasoline throughput must be kept on site.

Section 330.991(a)(9) authorizes the shredding of a maximum of 11 tons of tires per hour based on the maximum amount of PM that may be emitted simultaneously to steady-state landfill operations, and still not cause or contribute to a condition of air pollution.

Section 330.991(a)(10) requires that a bioremediation pad be located at least 165 feet away from any off-property receptor. Modeling conducted as part of the protectiveness review using this setback, and emissions data from historical bioremediation activity, predicted that total petroleum hydrocarbon (TPH) concentrations at 165 feet from the receptor would not be expected to adversely affect human health and the environment. No published information was located regarding the expected air emissions from this process, after a literature search and an internet subject search. Limited data from 24 PBR applications at landfill sites indicate a TPH contamination range from 0.1% to 6% weight. However, there is no measured data that indicates what percentage of the contamination is actually emitted to the atmosphere during the process. The worst-case permit application was for 45,000 cubic yards of TPH contamination up to 60,000 parts per million by weight, where the company used Chemdata 8 to calculate TPH at 5 pounds per hour (lbs/hr) or 22 tpy based on using a limited capture carbon adsorption system. Almost all of the approximately 24 other PBR landfill claims have been based on estimates only. Therefore, as a conservative approach, the commission used emission rates of 3.4 lbs/hr for small landfills, 5.95 lbs/hr for medium landfills, and 14.9 lbs/hr for large landfills, to model TPH for each size landfill to show protectiveness.

Section 330.991(a)(11) requires the total collected emissions from the landfill GCCS to be routed to listed control devices or methods when the MSW landfill site has triggered the requirement for a GCCS under 40 CFR §60.752(b)(2); classified as a Category 3 under §330.983(d)(3). MSW landfills that are regulated under Categories 1 and 2 are not required to install a GCCS under Subchaper U or Subpart WWW, but may do so on a voluntary basis in order to control odor at the site. In these cases, the GCCS system is not required to meet the standards specified in Subpart WWW, but it is highly recommended that these standards be considered in designing and constructing their systems in order to prevent future modifications or changes that may be necessary if the MSW landfill site expands or increases its acceptance rate. If a flare is used for a Category 1 and 2 GCCS to burn the methane and NMOCs, it could be authorized under §106.492, and not be subject to 40 CFR §60.18.

Under §330.991(a)(11), the control devices and methods must meet the following requirements: flares that comply with 40 CFR Part 60 Subpart WWW, which must meet the conditions specified in 40 CFR §60.18; landfill gas-fired stationary internal combustion engines or turbines not used to generate electricity must satisfy the requirements of §106.4, Requirements for Permitting by Rule and §106.512, Stationary Engines and Turbines; landfill gas-fired electric generating units that meet all of the requirements of Chapter 116, Subchapter F, and the Air Quality Standard Permit for Electric Generating Units; landfill gas-fired boiler, heater, or other combustion units, not including stationary, reciprocating internal combustion engines or turbines, that satisfy the maximum heat input and nitrous oxide requirements of §106.4(a)(1) and §106.183, and applicable sections of Chapter 117, Control of Air Pollution from Nitrogen Compounds; pollution control projects that satisfy all the requirements of §116.617, Standard Permits for Pollution Control Projects; and a gas treatment system that processes the collected landfill gas to produce a saleable product or by-product for subsequent sale or use, where emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of 40 CFR §60.752(b)(2)(iii)(A) or (B).

Section 330.991(a)(12) requires a temporary rock crusher that is used exclusively for cell construction to satisfy all the requirements of the Standard Permit for Temporary Rock Crushers.

Section 330.991(b) requires that the appropriate regional office or local program be contacted to obtain proper data forms and

procedures prior to any required stack or process vent sampling as mandated under applicable federal regulations. All sampling and testing procedures must be approved by the executive director. The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

Section 330.991(c) requires that emission sources covered by this standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly, which means that all equipment must function at least equal to the manufacturer's specifications, during normal facility operations. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201, Emissions Event Reporting and Recordkeeping Requirements, and §101.211, Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.

Section 330.991(d) specifies the monitoring and control requirements for PM for the MSW landfill sites. The MSW landfill is also subject to the visible emission standards of Chapter 111. Visible emissions generated at the site and crossing the property line shall not exceed 30 seconds over a six-minute period as determined by EPA Test Method 22. The commission selected Method 22 for simplicity, rather than specifying an opacity limit that must use Method 9, which in turn requires a trained certified observer for compliance.

Section 330.991(d)(2) requires that dust emissions from road and traffic areas directly associated with the operation of an MSW landfill site be minimized by treating them with dust-suppressant, chemicals, watering, or paving. In addition, the roads and other areas should be kept clean of debris. Similarly, §330.991(d)(3) requires that landfill excavated areas be watered or treated with dust-suppressant chemicals when needed to minimize emissions during excavation.

Section 330.991(e) prevents tire shredding, outdoor dry abrasive blasting, the operation of a temporary rock crusher used exclusively for cell construction, or waste solidification/stabilization when fine materials are used in the process from occurring at the same time in order to limit the PM effects. Air dispersion modeling for landfill PM had exceedances in ESLs, so it is necessary for the commission to limit the activities under this subsection in order to protect the public health and the environment.

Section 330.991(f) requires an MSW landfill cell that contains Class 1 industrial nonhazardous waste greater than 20% by weight or volume to have a GCCS associated with the location of the Class 1 waste, and that GCCS is subject to the provisions of §330.993.

The commission adopts new §330.993, Additional Requirements for Owners or Operators of Category 3 Municipal Solid Waste Landfills. Section 330.993(a) specifies that the owner and/or operator shall comply with the applicable provisions of 40 CFR Part 60, Subpart WWW. The GCCS must be designed to route the total collected NMOC gas emissions to at least one of the control devices listed in §330.991(f), to ensure the protectiveness of human health and the environment. Any other control device (e.g., enclosed flare) used is required to reduce the total collected NMOC gas emissions by 98%, or to less than 20 parts per million by volume (ppmv), as hexane. These design requirements were used to model emissions from a typical landfill flare or any other control device during the protectiveness review conducted for this standard permit.

The landfill gas may also be treated and used or sold, as described in 40 CFR §60.752(b)(2)(iii)(C). Landfill gas may also be used as fuel for stationary internal combustion engines, stationary electric generating units or boilers, or heaters or other combustion units as described in §330.991(f), so long as they meet the specified requirements of the referenced PBR or standard permit, except the registration and fee requirements. The NMOC gas emissions may also be routed to a control device that satisfies the requirements of §116.617. The GCCS may be capped or removed when the MSW landfill is permanently closed in accordance with Chapter 330, as indicated in §330.993(a)(1), provided a closure report has been submitted to the TCEQ Air Permits Division in accordance with 40 CFR §60.757(d).

Section 330.993(b) requires the owner/operator to monitor the methane concentration at the surface of the MSW landfill quarterly, as specified in 40 CFR §60.755(c). Section 330.993(c) requires the owner/operator to monitor the GCCS in accordance with 40 CFR §60.756.

The commission adopts new §330.995, Recordkeeping and Reporting Requirements for all Municipal Solid Waste Landfill Sites, to establish recordkeeping requirements for MSW landfill sites authorized under this standard permit. Section 330.995(a) would require that a copy of Subchapter U, along with a list of any claimed PBRs and applicable general conditions of Chapter 106, Subchapter A, General Requirements, and standard permits be maintained at the MSW landfill site.

Section 330.995(b) requires that the owner/operator maintain records for any claimed PBR or standard permit. The operator will keep records containing sufficient information to demonstrate compliance with all applicable general requirements and all applicable PBR or standard permit conditions.

Section 330.995(c) requires that the owner or operator maintain records specified in 40 CFR Part 60, Subpart WWW, if applicable, including that operating records be maintained in accordance with §330.125, Recordkeeping Requirements; an Initial Design Capacity Report required by 40 CFR §60.757(a)(2), Reporting Requirements; or an Amended Design Capacity Report required by 40 CFR §60.757(a)(3). Subsection (c) contains a reminder to the owner/operator to maintain all records in accordance with the provisions of 40 CFR §60.758, Recordkeeping Requirements. Subsection (c) also requires that the owner or operator submit a semiannual compliance report to the TCEQ's Office of Compliance and Enforcement, in accordance with the provisions of 40 CFR §63.1980.

Section 330.995(d) requires the maintenance of records at the site, and that the records shall be made available at the request of representatives of the executive director, the EPA, or any air pollution control program having jurisdiction over the site. Section 330.995(e) requires the retention of records for at least 60 months.

Protectiveness Review

Based on analysis of existing landfills, the commission concludes that the PBRs and standard permits listed in this preamble discussion of Subchapter U cover the majority of air contaminant emitting activities at a landfill. Landfill activities were examined for their potential effect on human health, and the commission concluded that the restrictions imposed by the PBRs and standard permits are protective of human health. The commission further concludes that additional activities at landfills that would be regulated under other PBRs do not occur with a frequency or magnitude that would affect human health and

has not placed a restriction on additional PBR use. The commission does not have a restriction on the number of PBRs that may be used at a landfill and believes that such a restriction is unnecessary because of the limited amount of activity occurring under each PBR. The commission performed a protectiveness review to confirm this and developed a worst-case scenario.

Emissions from all pollutants, except PM, TPHs, and manganese (associated with welding), were modeled assuming a small landfill of 50 acres, with all activities occurring at the site at the same time. This is a conservative approach because it is not expected that all activities will occur simultaneously. In addition, the emissions rates used in the modeling were representative, worst-case emissions based on activities at a large landfill of 300 acres. In other words, emission rates generated by activities occurring at a 300-acre landfill were assumed to be emitted within the area of a 50-acre landfill. PM, TPH, and manganese emissions were modeled separately assuming a 50-acre, 100-acre (medium size landfill), and 300-acre landfill because larger landfills typically generate more of these pollutants. Pollutants evaluated were PM, sulfur dioxide, nitrogen dioxide, carbon monoxide, manganese, TPH, gasoline, benzene (in gasoline), and a number of other volatile organic compounds and hazardous air pollutants.

The uncontrolled speciated organic concentrations from AP-42's Table 2.4-1(default values), were used for modeling purposes to predict concentrations in order to determine protective review for ESLs. It was assumed that all these compounds are emitted as fugitives from a small landfill at the highest rate allowed, 50 Mg/yr, before capture and control is required.

As discussed in Chapter 4.0 of the AP-42, background document for Table 2.4-1, these defaults based on volume fractions of total landfill flow, were derived from co-disposal of MSW and commercial/industrial waste sites, non-co-disposal (pure MSW), and unknown co-disposal. In this chapter it states that these default values can be used for estimating speciated emissions from landfills when site-specific data are not available. Since this type of data was unavailable from Texas landfills and the cost prohibitive nature for speciating and quantifying over 46 compounds in landfill gas, the commission selected the EPA's default concentration values for uncontrolled emissions for these pollutants to evaluate the potential effects. As the EPA discussed in the background document, which derived the default concentrations, the data indicated that benzene and toluene had higher concentrations when there was co-disposal of industrial/commercial and household wastes. Table 2.4.2 shows the higher default concentrations for these compounds. Therefore, these higher values were used as a conservative approach in modeling, assuming co-disposal of household and industrial nonhazardous waste. The EPA default values of speciated organics contain hazardous air pollutants, but based on the conservative modeling approach, the hazardous air pollutants emissions will not be expected to adversely affect human health and the environment.

Section 330.173(f), Disposal of Industrial Wastes, allows up to 20% nonresidential commercial/industrial waste in an MSW landfill, so the default values in Table 2.4.2, in addition to the default values of Table 2.4.1, were used for modeling to determine protectiveness of human health. A consultation with EPA indicated that California data regarding the amounts of co-disposal of MSW and commercial/industrial was consistent with what was reported from the national survey of 35% - 45% reported commercial waste. Since California started controlling what was placed in landfills earlier than most states, the Texas limit of 20% commercial waste probably offsets the 35% - 45% reported considering that California was more stringent on what commercial wastes were placed in MSW landfills. Based on what the EPA reported as co-disposal, and the TCEQ's allowable of 20% co-disposal, the commission believes it is reasonable to use the EPA speciated default values. TCEQ was not able to obtain information on the characteristic or quantities of expected air emissions from the MSW stakeholders. For existing MSW landfills that have reported Class 1 waste in excess of 20%, the only way these sites could pass the protectiveness review was to control the emissions by having that area of the landfill where the Class 1 waste was located, be controlled with a GCCS.

A large amount of data used to derive speciated default values are from compliance reports from California's South Coast Air Quality Management District. EPA believes that the detail of these data references outweigh their geographic bias. Based on EPA's endorsement, the commission made the assumption to use the AP-42 Tables 2.4.1 and 2.4-2 default values for uncontrolled speciated air emission modeling, and found that these values produced no modeled adverse impacts. The commission notes that for the uncontrolled emission air dispersion modeling (i.e., fugitive emissions) from a small landfill at three times the rate (i.e., 150 Mg/yr versus the trigger of 50 Mg/yr where a GCCS is required), the ESLs showed no expected adverse impacts. Actual NMOC measurements submitted to the TCEQ from 69 Texas landfills new source performance standards Subpart WWW compliance reports further supports the California data. From these 69 reports, only six reported NMOC values in excess of the 595 ppmv standard set by EPA for no co-disposal. None of the reported six excesses were close (1,164 ppmv highest value) to the EPA's suggested default NMOC concentration of 2,420 ppmv for landfill gas from co-disposal sites.

Of the pollutants modeled in the preliminary analysis, only TPH, manganese, gasoline, benzene, and PM had exceedances of ESLs. This information led to either emission restrictions in the standard permit to meet applicable standards or guidelines or additional review of operations. The restrictions included in this standard permit include: TPH emissions are limited by restrictions on bioremediation pads; and gasoline and benzene emissions from the gasoline are limited by restrictions on annual throughput and required vapor balancing of tanks. PM emissions are limited by requiring additional authorizations for facilities with PM emissions, and restricting simultaneous operations of tire shredding and abrasive blasting. PM emissions are also limited by placing limits on visible emissions at MSW landfill site property lines. This requirement helps ensure that the cumulative PM emissions of 15.64 lbs/hr of PM for the small landfill, 24.02 lbs/hr for the medium size, and 41.33 lbs/hr for the large landfill, are unlikely to result in any adverse off-property affects or exceed the standards of Chapter 111 or the 24-hour or annual national ambient air quality standards for PM. PM was evaluated from landfill cell activities and other expected operations at the site for compliance with total suspended particulate standards. Results showed, with reasonable restrictions as required by the standard permit, that if operated in compliance with the standard permit, no dust nuisance conditions should occur. Additional review was performed for inhalable PM compliance with the national ambient air quality standards daily and annual concentration limits. The results showed that expected MSW landfill and related emissions would be approximately 53% of the standard. Although not represented in this analysis

due to low factor rating and modeling reliability, truck traffic contributions are not expected to result in exceedances of any standards and are ensured by the best management practices required for any traffic area to minimize PM generation. Manganese emissions are a result of welding operations that were further evaluated. Typical operations and material usage rates were reviewed and determined to be inherently limited; therefore, no additional restrictions are included in this standard permit. Based on these restrictions and review, the commission determines that the standard permit will be protective of human health and the environment. A complete report of modeling results is available by request to the commission.

The inclusion of spray mist systems into the air standard permit was requested by landfill owner/operators. These systems are used at landfills to control odor and spray proprietary compounds that neutralize odors. The commission received information from four manufacturers of deodorizing products, analyzed the information for health effects, and determined no adverse effects. As a result of this analysis, the commission has removed all restrictions, other than visible emissions restrictions, on the use of these products in spray mist systems.

The commission repeals §330.1001, Purpose, and moves the requirements of this section to new §330.1201.

The commission repeals §330.1002, Applicability, and moves the requirements of this section to new §330.1203.

The commission repeals §330.1003, Definitions, and moves the requirements of this section to new §330.1205.

The commission repeals §330.1004, Generators of Medical Waste. The commission moves the requirements of §330.1004(a) to new §330.3; §330.1004(b) to new §330.1207(a); §330.1004(c) - (e) to new §330.1219(a) - (c); §330.1004(h)(2) - (6) to new §330.1207(b) and acknowledges that medical waste may be transported by the United States Postal Service by First Class or Priority Mail in accordance with the Domestic Mail Manual, incorporated by reference in 39 CFR Part 111 (relating to General Information on Postal Service); and §330.1004(i) and (j) to new §330.1207(c) and (d). The commission deletes the definition of "other regulated medical waste" from new §330.3, and deletes §330.1004(g). The commission establishes that any solid waste from a health care-related facility that is not within the definition of medical waste, as defined in §330.3, is MSW. The commission deletes the description "on-site" from §330.1004(f) and adopts a new §330.1205(b) to expand the definition of "on-site."

The commission repeals §330.1005, Transporters of Medical Waste. The commission changes the registration requirement for transporters of untreated medical waste who are not the generator to a requirement for a registration by rule. Drivers' names and license numbers are not required as part of the registration by rule. This will reduce the reporting requirements for untreated medical waste transporters since they will no longer have to update the registration each time a driver changes. The commission moves the requirements of §330.1005(a) to new §330.1211(a); §330.1005(e) to new §330.1211(b); §330.1005(g) - (o) to new §330.1211(c) - (k); §330.1005(p)(1) to new §330.13(e); §330.1005(p)(2) to new §330.11(h); and §330.1005(q) and (r) to new §330.1211(l) and (m).

The commission repeals §330.1006, Transfer of Shipments of Medical Waste, and moves the requirements of this section to new §330.1213.

The commission repeals §330.1007, Interstate Transportation, and moves the requirements of this section to new §330.1215.

The commission repeals §330.1008, Medical Waste Collection Station. The commission moves the requirements of §330.1008(c) to new §330.1217.

The commission repeals §330.1009, Storage of Medical Waste. The commission moves §330.1009(a) to new §330.1209(a); §330.1009(b) to new §330.9(n) and §330.13(d); and §330.1009(d) to new §330.1209(b) and §330.1211(c)(2)(F).

The commission repeals §330.1010, On-Site Treatment Services on Mobile Vehicles. The commission moves §330.1010(a) to new §330.1221(a); §330.1010(b), (d), and (e) to new §330.9(m); §330.1010(c) to new §330.1221(b); §330.1010(g) - (n) to new §330.1221(c) - (j); and §330.1010(o) and (p) to new §330.1221(l) and (m). The commission changes the registration requirement for owners or operators of mobile units conducting on-site treatment of medical waste that are not the generator to a registration by rule. The commission eliminates the requirement for drivers' names and license numbers as part of the registration by rule to reduce reporting requirements.

The commission adopts new §330.1201, Purpose, and moves the requirements of §330.1001 to this section. These requirements are moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.1203, Applicability, and moves the requirements of §330.1002 to this section. These requirements are moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. In §330.1203(a), the commission establishes that owners and operators comply with the 2006 Revisions to this subchapter within 120 days after the effective date of the 2006 Revisions.

The commission adopts new §330.1205, Definitions. The commission moves the requirements of §330.1003 to new §330.1205(a). As a streamlining initiative, the commission reduces the level of agency approvals of low impact waste management activities and promotes authorized medical waste management facilities across Texas by adopting new §330.1205(b) to expand the definition of "On-site." For the purposes of Subchapter Y only, the commission establishes that medical waste that is managed on property owned or effectively controlled by one entity that is within 75 miles of the point of generation is considered to be managed "on-site." Medical waste managed on property owned or effectively controlled by one entity that is greater than 75 miles of the point of generation will be considered to be from an "off-site" source. Any solid waste generated on properties owned or effectively controlled by an entity, regardless of distance, will be considered to be from an "off-site" source if managed by a different entity. The commission added a definition for affiliated facility to allow a hospital to operate an integrated medical waste management unit within a contiguous health care complex. The remaining requirements are moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative*

Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.1207, Generators of Medical Waste. The commission moves the requirements of §330.1004(b) to new §330.1207(a); §330.1004(h)(2) - (6) to new §330.1207(b) and acknowledges that medical waste may be transported by the United States Postal Service by First Class or Priority Mail in accordance with the Domestic Mail Manual, incorporated by reference in 39 CFR Part 111 (relating to General Information on Postal Service); and §330.1004(i) and (j) to new §330.1207(c) and (d). The commission establishes, in new §330.1207(a), that any solid waste from a health care-related facility that is not within the definition of medical waste, as defined in §330.3, is MSW. The commission has added to §330.1207(c)(5) that the generator provide the weight of the container and contents on the label affixed to a container of untreated medical waste. The remaining requirements are moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission adopts new §330.1209, Storage of Medical Waste. The commission moves the requirements of §330.1009(a) to new §330.1209(a). Previous regulations required all medical waste to be refrigerated after specified time frames. The commission adopts new §330.1209(b) to require all persons who are not the generator or treatment facility to refrigerate to 45 degrees Fahrenheit only putrescible or biohazardous untreated medical waste that will be stored for longer than 72 hours after receipt from the generator. The commission will allow treatment facilities to store putrescible or biohazardous untreated medical waste for up to 72 hours after receipt before having to refrigerate the waste. Refrigeration helps to slow the biological degradation of the waste, which can help to reduce the creation of a health hazard or nuisance condition.

The commission adopts new §330.1211, Transporters of Untreated Medical Waste. The commission adds the word "untreated" to the title of the section to establish that this section applies only to untreated medical waste. Previously, the commission had no specific transporter requirements for treated medical waste. The commission moves the requirements of §330.1005(a) to new §330.1211(a); §330.1005(e) to new §330.1211(b); §330.1005(g) - (o) to new §330.1211(c) - (k); and §330.1005(q) and (r) to new §330.1211(l) and (m). The commission has deleted the phrase "that is designated as a medical waste" from the proposed version of §330.1211(a). The commission has extended the requirement to notify the executive director of changes to the registration in new §330.1211(b) from the proposed 15 days to 30 days to allow additional reporting flexibility. In §330.1211(c) and (d) the commission changes the term "vehicle" to "transportation unit." Transportation unit is defined in §330.3. This change clarifies the types of transportation units subject to Subchapter Y. The commission adopts new §330.1211(c)(2)(C) to allow transportation units to be locked or secured to acknowledge that there are other methods besides locks to prevent tampering with waste shipments. The commission adopts new §330.1211(e) to allow co-transportation of untreated medical waste, containerized Animal and Plant Health Inspection Services (APHIS) waste, and nonhazardous pharmaceutical waste provided the entire shipment is delivered to the same treatment facility. In §330.1211(j) the commission changes "permitted facility" to "authorized facility" to allow flexibility for the management of medical waste. The remaining requirements are moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission adopts new §330.1211(c)(2)(F) to require all transporters who are not the generator to refrigerate to 45 degrees Fahrenheit putrescible or biohazardous, untreated medical waste that will be transported for longer than 72 hours after initial receipt from the generator. Refrigeration helps to slow the biological degradation of the waste, which can help to reduce the creation of a nuisance condition.

The commission adopts new §330.1213, Transfer of Shipments of Medical Waste, and moves the requirements of §330.1006 to this section. The commission changes "vehicle" or "transport vehicle" to "transportation unit" to consistently use the term "transportation unit" throughout Subchapter Y. The commission establishes that this section applies only to untreated medical waste by changing "medical waste" to "untreated medical waste." A facility that is authorized by the commission and is following the provisions of its authorization is considered to be operating in a manner that is protective of the environment. The commission also changes "permitted facility" to "authorized facility" to allow flexibility for the proper transfer, storage, and collection of medical waste. This change will allow for more options to comply with the commission's rules and may encourage medical waste processors to establish fixed facilities to provide service to areas outside of the major metropolitan areas of Texas.

The commission adopts new §330.1215, Interstate Transportation, and moves the requirements of §330.1007 to this section. The commission establishes that this section applies only to untreated medical waste by changing "medical waste" to "untreated medical waste."

The commission adopts new §330.1217, Medical Waste Collection Stations. The commission moves the requirements of §330.1008(c) to new §330.1217. The commission changes "permitted" to "authorized" to encourage the proper treatment of medical waste. A facility that is authorized by the commission and is following the provisions of its authorization is considered to be operating in a manner that is protective of the environment. This change will allow for more options to comply with the commission's rules and may encourage medical waste processors to establish fixed facilities to provide service to areas outside of the major metropolitan areas of Texas.

The commission adopts new §330.1219, Treatment and Disposal of Medical Waste. The commission moves the requirements of §330.1004(c) - (e) to new §330.1219(a) - (c). The commission adopts, in new §330.1219(a)(3)(E)(ii), the requirement for operators to record operating parameters of medical waste treatment processes and reagent strength, if applicable, and to maintain those records for three years. The commission has removed the ban on compacting treated, unencapsulated medical waste sharps in new §330.1219(b)(4)(B) to conform to current commercial medical waste treatment practices. The commission allows, in new §330.1219(c), for unused hypodermic needles, syringes with attached needles, and scalpel blades to be ground or shredded and then disposed in a Type I or Type IAE MSW landfill if the sharps have been made unrecognizable and significantly reduced in ability to cause puncture wounds in accordance with §330.1219(b)(4)(D) as another treatment option in addition to encapsulation as allowed in §330.1219(b)(4)(B) or

(C). The commission adopts new §330.1219(d) to require operators of medical waste treatment equipment to use backflow preventers on any potable water connections to prevent contamination of potable water supplies. The commission adopts new §330.1219(e) to allow treated medical waste to be managed as routine MSW with the condition that treated medical waste that contains whole, nonencapsulated hypodermic needles or syringes or intact red bags that is sent to a landfill for disposal shall be accompanied by a shipping document. This shipping document must include a statement that the shipment contains whole, nonencapsulated hypodermic needles or syringes or intact red bags, as applicable, and that the medical waste was treated in accordance with 25 TAC §1.136, Approved Methods of Treatment and Disposition.

The commission adopts new §330.1221, On-Site Treatment Services on Mobile Treatment Units. The commission changes "vehicle" to "treatment unit" throughout this section to clarify that it is the treatment unit to which the requirements apply. The commission moves the requirements of §330.1010(a) to new §330.1221(a); §330.1010(c) to new §330.1221(b); §330.1010(g) - (n) to new §330.1221(c) - (j); and §330.1010(o) and (p) to new §330.1221(l) and (m). In §330.1221(b) the commission changes the authorization from a registration to a registration by rule. The commission also deletes the requirements for the appeal of a revocation or denial of a registration since the authorization is changed from a registration to a registration by rule. The commission adopts new §330.1221(g)(7) to require that owners or operators of mobile treatment units providing on-site treatment of medical waste to keep records of all waste treatment regarding identification of performance test failures including date of occurrence, corrective action procedures, and retest dates to ensure that all wastes are fully treated. The commission adopts new §330.1221(k) to have owners or operators maintain equipment to prevent the creation of nuisance conditions.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225, because they do not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The DRAFT REGULATORY IMPACT ANALYSIS stated that the proposed rules did not qualify as a major environmental rule because the specific intent of these rules did not include the protection of the environment or the reduction of risk to human health from environmental exposure. The commission received several comments stating that some of the new requirements have environmental protection as their intent. The commission agrees with these commenters that specific provisions of the adopted rules are intended to increase environmental protection or to reduce the risk to human health from environmental exposure. However, the adopted rules do not qualify as a major environmental rule because they are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although there will be some additional costs to owners and operators due to the new requirements, these additional costs are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition to environmental protection, the specific intent of the adopted rules is to revise and update the Chapter 330 rules to more appropriately reflect the current programs and requirements of the TCEQ's Municipal Solid Waste Permits Section; improve the organization of the chapter by providing an overall topic reorganization; restructure the rules from predominantly landfill-based to a general solid waste management structure; remove obsolete requirements and references; incorporate streamlining initiatives for low-risk waste activities to increase the flexibility and efficiency of MSW regulation; update the requirements for counties to obtain permitting authority over certain MSW activities; streamline the MSW transporter requirements; revise the regulatory requirements for medical waste management and transportation; increase buffer-zone requirements; establish basic levels of QA and QC for sampling and analysis reports; establish new requirements for vertical expansions over pre-Subtitle D cells; harmonize the MSW rules with the commercial-industrial nonhazardous waste landfill rules; specify which construction activities are allowed prior to authorization; implement operational standards for MSW storage and processing units; revise the well-spacing requirements for groundwater monitoring; revise the requirements relating to regional and local solid waste planning; reduce the level of approval needed for low-impact waste management activities; establish a new standard air permit for MSW landfill facilities and transfer stations; implement revised groundwater monitoring requirements; revise the requirements for detecting and measuring landfill gas at MSW facilities; update the requirements for monitoring landfill gas near closed landfills; incorporate recent legislative changes; and increase protection of the environment and reduce risk to human health from environmental exposure. The rules apply to individuals involved in the management and control of MSW. Therefore, the commission concludes that the adopted rules do not meet the definition of a major environmental rule.

Furthermore, even if the adopted rules met the definition of a major environmental rule, this rulemaking action does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements. First, the rules are consistent with, and do not exceed, the standards set by federal law. Second, the rules do not exceed an express requirement of state law. THSC, Chapter 361 authorizes the commission to control all aspects of the management of MSW. However, there are no specific requirements for the control of MSW that are exceeded by these rules. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission

does not adopt these rules solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051,which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits. Therefore, the commission does not adopt these rules solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether the rules constitute a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted rules is to revise and update the Chapter 330 rules to more appropriately reflect the current programs and requirements of the TCEQ's Municipal Solid Waste Permits Section; improve the organization of the chapter by providing an overall topic reorganization; restructure the rules from predominantly landfill-based to a general solid waste management structure; remove obsolete requirements and references; incorporate streamlining initiatives for low-risk waste activities to increase the flexibility and efficiency of MSW regulation; update the requirements for counties to obtain permitting authority over certain MSW activities; streamline the MSW transporter requirements; revise the regulatory requirements for medical waste management and transportation; revise the buffer-zone requirements; establish basic levels of QA and QC for sampling and analysis reports; establish new requirements for vertical expansions over pre-Subtitle D cells; harmonize the MSW rules with the commercial-industrial nonhazardous waste landfill rules; specify which construction activities are allowed prior to authorization; implement operational standards for MSW storage and processing units; revise the well-spacing requirements for groundwater monitoring; revise the requirements relating to regional and local solid waste planning; reduce the level of approval needed for low-impact waste management activities; establish a new standard air permit for MSW landfill facilities and transfer stations; implement revised groundwater monitoring requirements; revise the requirements for detecting and measuring landfill gas at MSW facilities; update the requirements for monitoring landfill gas near closed landfills; incorporate recent legislative changes; and increase protection of the environment and reduce risk to human health from environmental exposure. The adopted rules substantially advance these purposes by repealing specific sections of Chapter 330 and by providing new and modified sections of Chapter 330. The adopted rules will provide a benefit to society by providing updated regulations, streamlining specific waste management activities, and improving the readability and organization of the chapter. The new and modified provisions relate to permitting, reporting, and operational requirements for MSW facilities and do not impose a burden on a recognized real property interest and therefore, do not constitute a taking.

The promulgation of the adopted rules is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rules do not affect a landowner's rights in a recognized private real property interest because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to the property that would otherwise exist in the absence of this rulemaking and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. Therefore, these rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all costal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to balance benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the rules include the construction and operation of solid waste treatment, storage, and disposal facilities and discharge of municipal and industrial waste to coastal waters.

The specific purpose of this proposal is to: streamline low-risk waste activities to lower agency authorizations, including allowing PBRs and registrations by rule for certain low-impact waste management activities; to decrease regulatory requirements for small rural transfer stations; to increase the ease or desirability for counties to license certain MSW activities, within statutory constraints (see THSC, §§361.154 - 361.160); to streamline and clarify MSW transporter requirements; to allow a PBR for persons that compact or transport waste in enclosed containers or enclosed vehicles to Type IV landfills; to decrease regulatory requirements for medical waste management between hospitals and associated clinics; to revise the requirements for detecting and measuring landfill gas to establish more enforceable language; to add requirements to establish basic levels of QA and QC reporting in sampling and laboratory analysis reports submitted to the commission; to harmonize these rules with the commercial industrial nonhazardous waste landfill rules; to clarify which construction activities are allowed before authorization; to remove the ban on trench burners at MSW facilities and establish requirements for trench burners (air curtain incinerators) at MSW facilities, consistent with the PBR allowed by 30 TAC §106.496; to update the language that refers to professional geoscientists; to revise the MSW permit and registra-

tion application format to ease the COG application reviews of MSW facility siting and compatibility with local and regional solid waste management plans; to revise the annual/quarterly maintenance fee for transporters with a special collection route permit for enclosed containers or enclosed vehicles transported to Type IV landfills so that municipal and other transporters are required to pay the same fee; to revise buffer zone requirements; to harmonize these rules with the MSW landfill operational requirements for claiming the standard air permit under 30 TAC §116.621; increase protection of the environment and reduce risk to human health from environmental exposure; to reorganize the rules to improve readability; and to correct citations and update the agency's name.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because: the rules are consistent with these CMP goals and policies; these rules do not create or have a direct or significant adverse effect on any CNRAs; and like the former rules, these rules will ensure proper MSW management in all regions of the state, including coastal areas.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because the new air standard permit in Chapter 330, Subchapter U is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised air standard permit requirements for each emission unit affected by the revisions to the standard permit at their site.

PUBLIC COMMENTS

The TCEQ held a public hearing September 29, 2005. The comment period closed October 31, 2005.

Oral comments were received from: CHRISTUS Santa Rosa Healthcare Clinic; Environmental Health Management Systems, Inc.; Graves, Dougherty, Hearon & Moody (GDHM) on behalf of mineral owners; Micro-Waste Corporation, Dallas County Hospital District, and Medical City Dallas Hospital (Micro-Waste); Piper Management, Inc. (PMI); Texas Campaign for the Environment (TCE); Texas Hospital Association (THA); and Texas Organization of Rural and Community Hospitals (TORCH).

Written comments were received from: State Representative Ismael Flores (Representative Flores); State Representative Trey Martinez Fischer (Representative Fischer); State Senator Jeff Wentworth; Allied Waste Industries, Inc. (Allied); Association for Infection Control Professionals and Epidemiology, Inc., Dallas-FortWorth Chapter (APIC); Biggs & Matthews Environmental (BME); Capital Area Council of Governments (CAPCOG); CHRISTUS Santa Rosa Healthcare; the City of Austin; the City of Beaumont; the City of Port Arthur; Clean Water Action (CWA); Cold Springs Processing (CSP); CAS Engineering Services, Inc. on behalf of the Corpus Christi Animal Clinic (CCAC); Denton Regional Medical Center (DRMC); Environmental Health Management Systems, Inc. also supported by Gardere Wynn Sewell LLP (EHMS); Fritz, Byrne, Head & Harrison, L.L.P. on behalf of Chambers County (Chambers); GDHM; Hance Scarborough Wright Woodward & Weisbart on behalf of Newpark Resources, Inc. (Newpark); Harris County Attorney's Office and Harris County Public Health and Environmental Services, Pollution Control Division (HCPHES); Houston Regional Group of the Sierra Club (HSC); IESI TX Corporation; Liquid Environmental Solutions (LES); Lone Star Chapter of the Solid Waste Association of North America (TxSWANA); Med-Shred, Inc. (Med-Shred); Micro-Waste; National Solid Wastes Management Association, Texas Chapter (NSWMA); Northeast Action Group (NAG); North Texas Municipal Water District (NTWMD); Office of Public Interest Council (OPIC); Palingenesis Manufacturing Inc. (PMI); Positive Impact Waste Solutions (PIWS); Russell, Moorman, & Rodriguez, L.L.P. on behalf of North Texas Municipal Water District, City of Corpus Christi, Texoma Area Solid Waste Agency, City of Jacksboro, and its other municipal clients that own and operate MSW landfills and transfer stations (RMR); Squire, Sanders, and Dempsey, L.L.P. on behalf of Stericycle, Inc. (Stericycle); JD Consulting L.P. on behalf of Sharps Compliance, Inc. (Sharps); Texas Campaign for the Environment (TCE) also supported by Blackburn & Carter, Citizens Against Landfill Location, Citizens Against Montgomery Landfill, Hill Country Alliance, Northwest Abilene Homeowners Association, Public Citizen, Two Bush Community Action Group, TxPIRG, HSC, Clean Water Action, Luella Neighborhood Association, and several individuals; Texas Disposal Systems, Inc. (TDS); Texas Hospital Association (THA); Texas Liquid Waste Processors Association (TLWPA); TORCH; Travis County Commissioners Court; Vinson & Elkins L.L.P. on behalf of Waste Management of Texas, Inc. (WMTX); Winstead Sechrest & Minick P.C. on behalf of the City of Lubbock (Lubbock). Written comments were received from many individuals. All commenters either opposed portions of the rulemaking or supported the rulemaking with suggested changes. Comments received during the formal comment period, and informal comments that resulted in rule changes, are addressed below.

The commission considered adopting these rules at a public meeting on February 1, 2006, but delayed consideration to allow time for an additional informal comment period. The focus of the additional informal comment period was to receive public input on changes since proposal which the executive director had recommended for adoption at the February 1, 2006, commission meeting and to consider a resolution adopted by the Municipal Solid Waste Management and Resource Recovery Advisory Council on January 23, 2006. The informal comment period included receiving written comments until February 10, 2006, and a public meeting was held on February 10, 2006, to receive oral comments.

RESPONSE TO COMMENTS

General Comments

Comment

HCPHES stated that where rules are incorporated by reference, it should be made clear that material is incorporated as it existed on the effective date, and notice of any change in any incorporated provisions would be published in the *Texas Register*.

Response

The commission disagrees that incorporating rules by reference should be limited to incorporating rules as they existed on a certain date. The commission acknowledges that there are legal limits on the extent and manner that the commission may rely on other rules that are subject to being revised. The commission has considered this issue related to references to other rules, and determined that the commission has acted within its legal authority. This response does not discuss any of the specific references to other rules in Chapter 330, because the comment did not identify any specific provisions which should be revised.

As to publishing notice of any rule change in the *Texas Register*, the commission will continue to comply with state law related to publishing notice of rule changes in the *Texas Register*. No changes were made in response to this comment.

Comment

Individuals requested that the commission have rules that deter future pollution and encourage pollution prevention.

Response

The commission has rules to deter pollution and encourage pollution prevention. These rules include providing for legal disposal in a manner protective of the public and prohibitions against other manners of unauthorized disposal. No changes were made in response to these comments.

Comment

Individuals asked the commission to enforce all new and existing regulations and to make polluters pay their fair share of enforcement and cleanup costs.

Response

During 2004, the commission underwent an extensive self-review of its enforcement functions. The review resulted in a number of recommended changes to the enforcement process. The commission is now implementing those changes. No changes were made in response to these comments.

Comment

Many individuals commented that property owners and residents within a mile of landfills should be notified of major changes at landfills.

Response

The public notice requirements for changes to landfill permits are mainly located in 30 TAC Chapter 39, but Chapter 39 does rely on a cross-reference to landowners named on the application map, which includes property owners within 500 feet under adopted §330.59(c)(3). Providing this mailed notice in conjunction with the mailed notice to others listed in §39.413, and notice by publication provides adequate notice to those who could be affected by major changes at landfills. The commission made no changes in response to these comments.

Comment

Other commenters requested that property owners near landfills be notified of policy changes and events that potentially impact the environment.

Response

The commission continually strives to keep the public informed of policy developments through the use of mass mailings, stakeholder meetings, and the internet. No change was made in response to these comments.

Comment

TDS commented that MSW rules place a burden on the owner or operator of an MSW management facility to implement operating procedures to guard against receiving prohibited waste and hold the MSW facility responsible when it occurs. TDS commented that this is improper and that the emphasis of enforcement should be reversed.

Response

The commission agrees that generators have the greatest knowledge of the physical and chemical characteristics of a waste. Existing regulations provide that no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. By this rulemaking, the commission further establishes in §330.7(a), relating to Permit Required, and §330.9(a), relating to Registration Required, that the executive director may seek recourse against the generator, as well as the transporter, owner or operator, or other person who caused, suffered, allowed, or permitted waste to be stored, processed, or disposed in an unauthorized manner. The commission adds in §330.205(a) that the owner or operator must be able to document that generated waste leaving the facility can be adequately managed by other facilities, licensed or permitted by the appropriate agencies to receive such wastes. The commission establishes in §330.205(b) that wastes generated by a facility must be processed or disposed at an authorized solid waste management facility. The commission intends for generators to responsibly ensure that waste is sent to authorized facilities. No changes were made in response to these comments.

Comment

An individual commented that the preamble should explain that the new rules shift the responsibility for the design, construction, and operation of a facility from the commission to the operator. Due to this shift, information about the landfill's design and operation must be made easily available to the public to allow them to be involved in the facility's self-regulation. The commenter requested that any information about a facility, from groundwater and gas monitoring measurements to inspection reports, be made available via the internet or the most expeditious means available.

Response

The commission agrees with the commenter that the revised rules place additional responsibility for the design, construction, and operation of a facility on the operator. The commission also recognizes that there is an increased demand for information about the operation of MSW facilities. At this time the commission is not able to make all information about a facility available on the internet; however, information about MSW facilities that is not available on the internet is publicly available in the regional offices and the TCEQ's headquarters. No changes were made in response to these comments.

Comment

CAPCOG expressed the concern that the proposed Chapter 330 rules require the COG to conduct a pre-application review of MSW permits, but the current (adopted) Regional Solid Waste Management Plan (RSWMP) does not include any provisions for reviewing MSW permit applications. CAPCOG requested that the TCEQ not approve any MSW permit applications until the COG RSWMPs are approved and any outstanding permit applications reviewed according to the new RSWMP. CAPCOG suggested adding rule language requiring applicants to show compliance with proposed RSWMPs and prohibiting granting a permit prior to COG review.

Response

The commission recognizes that approval of the RSWMPs has been delayed due to the Chapter 330 rule revisions, but cannot postpone the MSW permit process until rule adoption. The

commission continues to solicit comments on MSW applications from the COGS. No changes were made in response to these comments.

Comment

PMI wanted to know what new technologies the agency was considering for alternatives to landfills.

Response

The TCEQ cannot sponsor specific or emerging technologies. The agency does feel that the proposed rules can accommodate the authorization of alternative technologies. No changes were made in response to these comments.

Comment

PMI wanted to know how new technologies were being processed by the TCEQ for implementation. PMI wanted to know if new technologies could be processed under existing and proposed rules or if legislative changes are required.

Response

The processing of new technologies depends on the nature of the technology and which rule set best addresses the authorizations in order to ensure protection of human health and the environment. Staff feels that the proposed rules can accommodate the authorization of new technologies. No changes were made in response to these comments.

Comment

PMI wanted to know how the TCEQ would mandate that all cities adopt new technologies and what assistance the state or federal government would give to help implement the technology.

Response

The TCEQ does not mandate a technology, but rather sets performance standards to be met. The TCEQ assists facilities in the implementation of new rule requirements through the publication of guidance documents, meetings, and training sessions. No changes were made in response to these comments.

Comment

PMI wanted to know if the legislature can be asked to create a proclamation to encourage the advancement of new technologies.

Response

The TCEQ cannot ask the legislature to create a proclamation. No changes were made in response to these comments.

Comment

PMI stated that due to recent hurricanes there was an insurmountable problem with construction and demolition debris. PMI wanted to know if the TCEQ was considering authorizing mobile waste treaters to process construction and demolition debris.

Response

In the case of a natural disaster, the governor has the authority as he did following the recent hurricanes to issue emergency proclamations granting the TCEQ additional authority to authorize related waste management activities. Additionally, under §330.11, Notification Required, if a process qualifies as recycling, it would be subject to the 30 TAC Chapter 328 and Chapter 330 rules. The commission believes that the adopted rules provide reasonable options for waste disposal, and provisions were not added to create an authorization for mobile construction waste treaters. No changes were made in response to these comments.

Comment

PMI stated that recent hurricanes have created challenges that were addressed by flotillas. PMI felt that there are mobile waste treatment units that could be placed on barges and moved by water. PMI wanted to know how the TCEQ would authorize barge mounted treatment units.

Response

In the case of a natural disaster the governor has the authority as he did following the recent hurricanes to issue emergency proclamations granting the TCEQ additional authority to authorize waste management activities. Additionally, under §330.11, Notification Required, if a process qualifies as recycling, it would be subject to the Chapter 328 and Chapter 330 rules. No changes were made in response to these comments.

Comment

PMI wanted to know if a processing unit could handle both MSW and industrial hazardous waste, how would that unit be authorized. Additionally, PMI wanted to know if it was practicable for large industrial plants to have their own treatment facility.

Response

A unit processing both hazardous waste and MSW may require dual authorization. The specifics of the authorization would be determined at the time of application submittal. Large industrial solid waste generators often have on-site storage, processing, and disposal facilities. No changes were made in response to these comments.

Comment

HCPHES requested, and provided suggested language at the commission meeting on March 1, 2006, that where the executive director must be notified or provided with additional documentation, the local pollution agency having jurisdiction should also be notified by the facility.

Response

The commission agrees with these comments and adds requirements throughout the chapter to provide that local pollution agencies with jurisdiction that have statutory authority to enforce environmental laws and rules should also be notified when notice is required to be provided to the executive director. These notification and reporting requirements apply to those local entities who specifically make a request to the TCEQ that they be included in the notification and reporting requirements for MSW authorizations in a specific county. The commission made changes to the rule in response to comments from HCPHES.

Subchapter A: General Information

§330.1. Purpose and Applicability.

Comment

Several commenters requested that a more aggressive approach be used to implement the 2006 Revisions to Chapter 330. Several commenters requested that the 2006 Revisions apply to all existing MSW facilities. Several commenters, including TCE and HCPHES, requested that the rules apply to applications that are not technically complete as of the effective date of the rules. NAG commented that applications filed in 2004 should be considered under the former rules,

and that applications filed in 2005 should be considered under the amended rules. Several commenters requested a less aggressive approach to implementing the 2006 Revisions. RMR stated that existing facilities, operating in compliance with existing rules and authorizations, should not have to spend thousands of dollars to comply with the 2006 Revisions since no additional environmental benefit is expected. WMTX and IESI requested that the 2006 Revisions only apply to applications for new facilities or major amendments filed after the 2006 Revisions become effective. TDSL commented that processing of applications for new facilities and major amendments under the former rules should be changed to apply only to those applications that are not technically complete as of the delayed effective date (180 days after filed with the Secretary of State's Office) of the 2006 Revisions.

Response

The commission drafted the applicability provisions in the amended rules based on balancing the need to comply with the amended rules in a timely manner with the appropriate amount of resources to be expended to comply with the amended rules. The commission recognizes that the regulated community invests significant resources toward complying with existing rules in conjunction with meeting long-term waste management plans. The commission tries to limit instances where existing facilities are required to initiate authorization changes to comply with new requirements to those situations where there is a significant protection to be gained. Although the amended rules do not require authorized entities to initiate changes to comply with most of the 2006 Revisions, the commission has identified several amended provisions which warrant requiring facilities to initiate changes to existing authorizations. The amended rules will provide increased protection of public health and the environment, and the this preamble has been revised accordingly. Changes were made to §330.1(a)(2) and (5) based on comments made during the additional informal comment period, including oral comments made at the commission's meeting on March 1, 2006. These changes adjust the time for complying with some of the 2006 Revisions if a facility has an application pending for a new permit or a major amendment for an increase in capacity. It is reasonable to allow these comprehensive applications to be processes and issued before a facility is required to initiate modifications to comply with the 2006 Revisions. The resources invested in these applications and the difficulty of making modifications while these applications are being processed justifies delaying the modifications required by the 2006 Revisions while such applications are pending. The time for applying for these modifications is the later of the dates between one year after final action on the pending application or the deadline established for a specific 2006 Revision modification under the provision requiring that modification. Section 330.1(a)(5) was also changed at the March 1, 2006, commissioner meeting to provide that applications for modifications and major amendments, other than major amendments to increase capacity, are subject to the former rules if they are filed within 180 days after the 2006 Revisions become effective. Filing these types of applications does not affect the schedule for incorporating the modifications required by the 2006 Revisions.

Comment

WMTX and IESI commented that facilities with authorizations other than permits and registrations, that existed prior to the effective date of the revised rules, should be required to comply with the revised rules within one year of the effective date of the 2006 Revisions instead of the proposed 120 days. Several commenters, including RMR, TDS, and IESI, stated that the time periods allowed to modify authorizations to comply with the amended rules were inadequate and should be extended. IESI commented that facility operators should have a period of one year in which to review the final adopted rules before having to apply to modify a permit. TDS recommended that implementation of the 2006 Revisions be set no sooner than 180 days from the date the final revisions are filed with the Secretary of State's Office, and that an additional 180 days be allowed before a facility has to apply to modify its authorization. TDS commented that a facility should be allowed to operate while its application to modify is pending.

Response

In addition to the preceding response explaining implementation policy, the commission carefully considered how and when the requirements subject to changes would need to be incorporated into existing authorizations. Those requirements which must be included in existing authorizations are relatively few compared to the overall rules being amended, and the implementation schedule allows adequate time for facilities to incorporate the changes. The commission has considered the amount of its staff resources that will be needed to incorporate the changes, and the commission is prepared to process the corresponding applications in a timely manner. A provision is included in §330.201, which sets up a call-in schedule for upgrades to site operating plans for storage and processing units, to allow the executive director to extend a deadline on a case-by-case basis. Changes have been made in response to these comments and the additional informal comments as discussed in the preceding response.

Comment

RMR commented that the commission should avoid using a self-implementing approach wherein amended requirements would supersede provisions in existing authorizations.

Response

The commission agrees with the general policy that a facility and inspector should be able to rely on the authorization document to determine the controlling requirements for a facility. Most of the new requirements for existing authorizations reflect this policy in that the new requirement must be incorporated into the authorization by modification. A few of the new requirements have been adopted to supersede provisions in existing rules and authorizations without requiring that authorizations be changed. An effort has been made to limit the use of this approach to issues that will impact only a few facilities, ministerial types of changes, or to requirements that would not usually have a corresponding conflicting provision stated in an authorization. The self-implementing provisions in the amended rules are: §330.121(c), which restricts the use of contaminated alternative daily cover, to be implemented immediately; §330.371(1), which clarifies how methane is monitored, to be implemented immediately; §330.1(a)(3) regarding authorizations other than permits and registrations, to be implemented within 120 days; and §330.1203(a), which implements medical waste management rules within 120 days. The commission has revised §330.261 related to QA and QC provisions, and §330.401(b) related to groundwater monitoring, in response to these comments to require a modification instead of using self-implementing provisions.

Comment

Several commenters, including PIC and RMR, questioned whether filing Parts I and II of a landfill application for a bifurcated land use hearing under the pre-2006 Revisions would enable the remainder of the application to be considered under the pre-2006 Revisions even if the remainder of the application is filed after the 2006 Revisions become effective.

Response

For the purpose of determining which rules apply to an application under §330.1(a)(2), the adopted rule provides that the whole application would have to be administratively complete for any of the application to be considered under the former rules. Only complete applications (Parts I - IV) which are submitted and declared administratively complete before the effective date of the 2006 Revisions may be considered under existing Chapter 330 rules.

Comment

Several commenters, including RMR and WMTX, objected to the staggered schedule proposed for complying with different requirements based on such an approach creating unnecessary burdens and ambiguity. Some commenters, including TDS, requested that the commission use the approach used with the 2004 site operating plan rules in which the executive director was allowed to establish a regional phase-in schedule.

Response

The commission has attempted to implement new requirements while imposing minimal burdens. The staggered schedule was used based on the need to incorporate the changes as soon as possible in conjunction with considering the resources that will be needed to prepare and review the changes. The commission has prepared a guidance document, "Chapter 330 Impacts on Existing Authorizations," to assist the regulated community and the public with identifying and locating the provisions requiring changes. Changes have been made to the rules in response to comments to delay the deadline to apply for 2006 Revision modifications while an application for new permit or a major amendment for a capacity increase is pending. Changes were also made to reduce the number of deadlines for incorporating the 2006 Revisions.

Comment

RMR commented that the schedule for existing permittees to modify their permits or comply with specific superseding provisions is unclear in the situation where a major amendment application is pending for an existing facility under the former rules. For example, based on the various provisions of the proposed rule revisions, it is unclear whether steps must be taken to bring the underlying permit into compliance with the 2006 Revisions through appropriate requests to modify the underlying permit.

Response

Existing authorizations are subject to the superseding provisions regardless of whether an application for a major amendment is being considered under the former rules. Changes have been made to the rules in response to comments to delay the deadline to apply for 2006 Revision modifications while an application for new permit or a major amendment for a capacity increase is pending.

Comment

TDS requested that the revisions needed for existing authorizations and when they are needed should be stated in §330.1, and in subsection (a).

Response

Changes have been made to the rules in response to comments to delay the deadline to apply for 2006 Revision modifications while an application for new permit or a major amendment for a capacity increase is pending. The amended provisions applicable to other existing authorizations are located throughout the amended rules based on how subjects are organized in the chapter. It would be redundant and cumbersome to re-state those provisions at the beginning of Chapter 330 as requested. A guidance document, "Chapter 330 Impacts on Existing Authorizations," has been prepared to assist with identifying and locating the provisions requiring changes.

Comment

HCPHES commented that the requirement to comply with "any other applicable federal rules, laws, regulations, or other requirements" should not be deleted from §330.1(a).

Response

These provisions were deleted as part of the commission's effort to simplify and streamline the rules. This effort includes excluding those requirements that exist independently of these rules. Such a general reference to other laws could give the impression that those laws are part of the TCEQ's permitting or enforcement programs. No changes were made to the rules in response to these comments.

Comment

TxSWANA requested that applicants should be given the choice of converting a pending application to proceed under the 2006 Revisions.

Response

The commission agrees with this comment, because protections are expected to be gained by complying with the amended rules. The rules have been revised to include this change. Changing a pending application to comply with the amended rules does not constitute a major amendment requiring additional notice. An applicant's election to proceed under the amended rules in a case pending at the State Office of Administrative Hearings is subject to obtaining approval from the administrative law judge.

Comment

Allied requested that §330.1(a) be revised to accurately characterize the scope of air contaminant emissions sources for which Chapter 330 will provide an authorization mechanism. HCPHES commented that the reference to "air emissions from MSW units" should be changed to refer to "air emissions from MSW landfill facilities and transfer facilities" and that the rule should reflect that it also relies on the statutory authority of THSC, Chapter 382.

Response

The commission has changed the rule in response to these comments. The addition of the phrase "landfills and transfer stations" is a more precise indicator of the rule's scope and THSC, Chapter 382 is the primary statutory authority for the promulgation of rules controlling air contaminants.

§330.3. Definitions.

Comment

HCPHES indicated that the preamble provides no supporting rationale or reasoned justification for the addition of numerous definitions and that some definitions were derived from Chapter 335 but are not consistent with the source definitions.

Response

The commission believes that added definitions provide clarity or reduce the likelihood of misunderstanding, and that where definitions were derived from other chapters, the differences are not substantial. No change is made in response to this comment.

Comment

HCPHES commented that several acronyms (i.e., MSW) are used in the Chapter 330 rules and several are proposed for deletion. HCPHES suggested that for clarity, acronyms as applicable and used in the Chapter 330 rules should be listed with the definition.

Response

As stated in the SECTION BY SECTION DISCUSSION of this preamble, the commission adopts administrative changes throughout the rules to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines. These changes include spelling out acronyms within every section of the rules. The commission does not believe greater clarity would be achieved by listing acronyms within the definitions and has made no change in response to this comment.

Comment

HCPHES suggested adding additional definitions from Chapter 335 and a definition of "do-it-yourselfer" as the term is used in proposed §330.15(e)(2).

Response

The commission avoided including definitions for terms that are generally accepted and understood, including "do-it-yourselfer." The commission believes that these generally accepted definitions are sufficient to address the limited usages of the terms in this chapter and that including these additional definitions will provide no significant clarification. No change is made in response to this comment.

Comment

HCPHES stated that the preamble explanation for the change to the definition of aquifer was to further establish what are significant quantities of groundwater. HCPHES commented that the proposed change for the purposes of laboratory analyses is ambiguous and requested that the definition be changed to state that if a water sample can be collected for the purposes of laboratory analyses, then that meets the minimum requirements of significant quantities of groundwater.

Response

The commission intended the revised definition of aquifer to ensure that sufficient groundwater is found to enable required laboratory analyses to be performed. Several individuals commented that the added language had the unintended consequence of defining any formation capable of supplying sufficient water for laboratory analyses, no matter how insignificant, as an aquifer. In response to those comments, the commission has deleted the reference to sufficient water for the purposes of laboratory analysis from the definition of aquifer. The commission has adequate authority under existing rules to require monitoring in appropriate groundwater formations to protect the environment.

Comment

Several commenters requested that the commission have only one definition for bioreactor, rather than the two proposed in §330.3, Definitions, and §330.983, Definitions.

Response

The commission has chosen to remove the definition of bioreactor from Chapter 330 due to concerns regarding design, operation, and conformance with the federal RCRA, Subtitle D program.

Comment

TDS commented that the proposed definition for commence physical construction is not clear and concise and its use as proposed is not harmonious with the definition of physical construction. The definitions need to be revised to present standards that prescribe the actions that constitute commencement of physical construction and harmonize their use throughout the proposed regulations.

Response

The commission agrees and has revised the definitions for commence physical construction and physical construction.

Comment

HCPHES indicated that the change within the definition of composite liner from "flexible membrane liners" to "geomembrane liners" is a non-substantive change.

Response

The commission agrees that the change is non-substantive. No change is made in response to this comment.

Comment

HCPHES supported the proposed change to the definition of contaminated water.

Response

Several commenters pointed out the unintended consequences of including water that has contacted daily cover in the definition of contaminated water. Based on those comments, the commission revised the definition of contaminated water to delete the reference to daily cover and alternative daily cover. These rules and corresponding enforcement provisions provide the appropriate level of protection. A provision has been added to §330.165 so that the runoff from alternative daily cover may be sampled or managed as contaminated water.

Comment

WMTX commented that water that has come in contact only with leachate or gas condensate--not with waste--should be treated as leachate or gas condensate, not as contaminated water. WMTX is not aware of any justification for regulating what is essentially diluted leachate and gas condensate more stringently or otherwise differently from undiluted leachate and gas condensate.

Response

The commission agrees with some of the comment and has revised the definition to more clearly define leachate, gas conden-

sate, and water that has come into contact with waste as contaminated water.

Comment

HCPHES commented that the definition of on-site includes an additional requirement that for properties required to submit a legal description, on-site is the property described by the legal description that is inconsistent with 30 TAC §335.1(98). The preamble does not provide an explanation for this change. HCPHES expressed the belief that this is unnecessarily creating another term for on-site in the MSW rules. HCPHES stated that a legal description may not follow the rule definition of on-site and the proposed rule as written does not require it.

WMTX commented that the proposed rules contain definitions for the terms facility and on-site. Additionally, the proposed rules provide that the definition of the term "site" is the same as that for the term "facility." It is not clear why TCEQ chose to provide a separate and different definition for on-site when the plain meaning of the term is to be within the prescribed boundaries of the site or facility. Someone or something is either on-site (i.e., within the boundaries of the site/facility), or off-site (i.e., outside of the boundaries of the site/facility).

However, applying the definitions in the proposed rules, one could be "on-site" within the proposed definition of that term, yet not within the "facility," as that term is defined in the proposed rules. Among other differences, the proposed definition of on-site includes noncontiguous properties, whereas the definition of facility is limited to "contiguous land." Given that the definition of site cross-references the definition of facility, the net result is that one could be "on-site" without being on the "site."

To avoid such confusion, WMTX suggested that the commission incorporate the proposed definition of on-site into the proposed definition of facility and remove the separate definitions for on-site and off-site from the list of definitions. WMTX suggested a definition of facility that incorporates the on-site proposal. The suggested definition incorporates the proposed definition of on-site nearly verbatim, with a few suggested edits to recognize that, while a facility may have one operator, the land may be owned by two or more multiple parties. Therefore, the definition of facility should not be limited to land owned by the same person. Additionally, WMTX proposed revisions to the wording of the on-site proposal to reflect that members of the public may be allowed controlled and limited access to some MSW facilities, such as landfills.

If the proposed definition of facility is retained and not revised to include the definition proposed for on-site, then the definition should be revised to remove references to land and structures, and other appurtenances and improvements on the land, that are merely "proposed" for use in solid waste storage, processing, or disposal. Such a broad definition arguably could result in land and structures that are neither used nor permitted for solid waste activities becoming subject to regulation because, at one time, either formally or informally, the land or structures were "proposed" for such use. Furthermore, TCEQ notes in the preamble to the proposed regulations that the proposed definition of facility is taken from the definition of "solid waste facility" found in THSC, §361.033 (see 30 TexReg 5546). The statutory definition of "solid waste facility" is limited to facilities that are actually "used for" solid waste processing, storage, or disposal, not merely proposed for such use (see THSC, §361.033). TCEQ's regulatory definition should not be broader than the definition enacted by the legislature.

Response

The commission agrees that the proposed definitions of on-site and off-site have introduced more uncertainty when compared to the definition of facility. The commission concurs that the plain meaning of on-site and the corollary off-site need no further definition within the context of this chapter, with the exception of the expanded definition for on-site within Subchapter Y for the management of medical waste. The commission has deleted the definitions of on-site and off-site from this section.

The commission agrees that the regulatory definition of facility should not be broader than the definition within the THSC. The commission has removed "or proposed to be used" from the definition of facility.

Comment

HCPHES, TCE and CWA commented that the TCEQ should adopt a definition of floodplain that is consistent with the definition employed in other program areas, and which allows the TCEQ to make a decision based on the best available evidence relevant to the location of the floodplain. The definition proposed is not consistent with the definition employed elsewhere in the TCEQ rules. Consistent with the definition of the term "floodplain" already utilized in the TCEQ rules, TCE proposed that 30 TAC §330.3(55) be amended to define a floodplain as having a 1.0% or greater chance of flooding in any given year from any source. Also, the TCEQ should be clear that the TCEQ will consider evidence beyond FEMA maps in determining the location of the floodplain. In areas where no FEMA map exists, the burden should be on the applicant to model the location of the 100-year floodplain. In areas where a FEMA map exists, other evidence must still be considered. Fewer than 40% of the areas mapped by FEMA have been mapped using detailed study methods, and landfills are often proposed in areas where development has occurred since mapping was performed, and thus the relevant floodplain may vary significantly from the floodplain as it existed at the time it was approximated by FEMA. FEMA's Technical Mapping Advisory Council itself has indicated that FEMA maps do not always correctly delineate areas prone to flooding. Limiting the floodplain to those locations with a contributing drainage area of at least one square mile is contrary to FEMA's current policy towards such areas. In 2000, FEMA's Technical Advisory Council itself identified the lack of flood hazard maps at such locations as a problem.

Response

The commission agrees with some of these comments and has changed the proposed additional language to the existing definition. Section 330.63(c)(2) has been changed in response to comment to reflect that the commission considers FEMA maps to be prima facie evidence of floodplain locations. The commission may consider or require information beyond FEMA maps in making a final determination on the location of floodplains.

Comment

HCPHES commented that the change to household waste to delete additional information about brush is acceptable since brush is a defined term in the rules and proposed adding to the definition of brush that cuttings or trimmings from trees, shrubs, or lawns, and similar materials not include any household waste.

Response

The commission revised the definition of household waste to clarify what constitutes household waste and deleted reference

to items that are not household waste. The commission feels that trying to define things that are not included in a definition leads to an endless list. Following that logic, the commission believes that adding to the definition of brush items that are not brush is not beneficial. No change was made in response to this comment.

Comment

HCPHES agreed that operating hours should be defined separately from waste acceptance hours.

Response

The commission acknowledges the comment. No change is made in response to this comment.

Comment

WMTX commented that the proposed definition of operating hours specifically includes facility construction activities. WMTX stated that this limitation essentially requires a facility to construct new cells, units, and other structures or improvements during the hours that the facility is accepting waste, conducting operations at the working face, and performing other daily on-site operations. WMTX expressed the belief that this presents both a potential safety hazard and a significant drain on facility resources. WMTX stated that conducting construction activities and waste acceptance and disposal activities at the same time crowds the facility with heavy equipment and increases the potential for collisions and injuries.

Additionally, TDS and WMTX commented that it may be necessary to perform some construction activities after hours in order to make the most efficient use of available equipment and personnel.

TDS and WMTX commented that the proposed definition of operating hours should not limit activities conducted to respond to emergencies (e.g., fires, flooding, berm breaches) or prevent compliance with applicable laws and regulations (e.g., repair of erosion or access breaches). Precluding these types of activities outside of normal operating hours would create a permit compliance problem for facility owners and operators, regardless of whether the facility acts or fails to act.

TDS commented that the operator may need to conduct certain operations outside of specified operating hours such as applying cover, moving and operating pumps to manage storm water, moving and maintaining equipment, stockpiling soil, cleaning up windblown litter, and a myriad of other operational needs.

WMTX suggested that the definition of operating hours not include facility construction activities; not include heavy equipment operation and the transportation of material on- or off-site incidental to construction activities; not include activities conducted to address on-site emergencies or activities necessary to maintain or achieve compliance with the requirements of this title or other applicable laws, ordinances, or regulations; and activities not included in the definition of operating hours may be conducted at any time.

Response

The commission agrees that other activities including construction, waste management unit operations, and on-site waste management activities may occur outside of operating hours as long as heavy equipment is not operated or materials are not transported on- or off-site. The commission has revised the definition of operating hours to be those hours when a facility is open to receive waste, operate heavy equipment, and transport materials on- or off-site.

Comment

WMTX commented that the point of compliance for purposes of groundwater monitoring should be consistent with methane monitoring. Subchapter I establishes a perimeter gas monitoring network along the facility boundary. The same should apply for groundwater monitoring.

Response

Existing regulations have allowed the groundwater point of compliance to be as far as 500 feet from the hydraulically downgradient limit of the waste management unit boundary consistent with federal regulations. Existing regulations require methane to be monitored at the facility boundary consistent with federal regulations. Many instances have occurred where landfill gas migration has affected groundwater quality. In those situations, owners or operators have installed gas probes near the groundwater monitoring wells as part of the demonstration for the source of the groundwater contamination. Installing landfill gas vents between the landfill and the groundwater wells typically improves groundwater quality. However, releases to groundwater are not always quickly or easily remediated. Since the facility boundary may be much further than 500 feet from the unit boundary, methane is generally monitored further away from the waste. Although there may be some benefits to monitoring groundwater and methane at the same distance from waste, these existing requirements have provided a reasonable method of monitoring groundwater and methane while maintaining consistency with federal requirements. The commission has made no changes in response to these comments.

Comment

WMTX commented that the Chapter 330 rules often use the term "person" to refer to roles or positions that may be performed or occupied by an individual or entity. For instance, the definitions of owner and operator in §330.3(103) and (104) are both limited to "persons." Such limiting language is not problematic so long as it is understood that a "person" may include an individual or entity.

To avoid confusion regarding this point, WMTX suggested that TCEQ promulgate a regulatory definition of "person" that mirrors the definition of the same term in THSC, §361.003.

Response

Since "person" is defined in §3.2(25) verbatim as the commenter has requested, and since this definition is applicable to all aspects of the TCEQ including solid waste, the commission has made no changes in response to these comments.

Comment

HCPHES commented that the estimated five pounds of solid waste per capita per day within the definition of population equivalent is out of touch with current studies. A study by Waste Age showed that the generation rate for Texas was 7.5 pounds per person per day in 2000. Based on the 2002 Plan Update to the Houston-Galveston Area Council Regional Solid Waste Management Plan 2002 - 2020, waste generation in the Houston-Galveston Area is 8.94 pounds per person per day. In 1992, the Houston-Galveston Area Council determined the waste generation rate to be 6.2 pounds per person per day. HCPHES requested the commission review the figures provided in all of the regional solid waste plans which are submitted to and approved

by the agency and update this population equivalent figure in this definition so that it is more accurate with current studies. HCPHES stated that updating this figure will make for more realistic projections of permit applications.

Response

The amount of household waste disposed per person per day in Texas in fiscal year 2004 was 5.4 pounds per person per day when adjusted for those waste streams used by the United States Environmental Protection Agency in its calculations. The five pounds per person per day in rule is very close to the current disposal rate of household waste. The commission made no change in response to this comment.

Comment

HCPHES commented that the definition of small municipal solid waste landfill should clarify that the less than 20 tons of construction or demolition waste is based on an annual average, that the revised definition does not specify a time period which is necessary for enforcement purposes.

Response

The commission considered this comment and has made some revision to the definition. Related to enforcement, provisions have been added to provide for a transition to dispose of the additional waste in a separate Type IV landfill unit. Without prescribing a specific time period by which a facility meets the criteria for the arid exempt site, per §330.5(b)(4) the TCEQ has the flexibility to consider the compliance criteria whenever appropriate.

Comment

HCPHES sought TCEQ concurrence that the definition of solid waste management unit also includes transfer stations.

Response

The commission believes that a transfer station is more appropriately characterized as a facility which may contain several units such as a waste pile, a container storage area where dumpsters or roll-off containers might be stored, and possibly one or more tanks for storage of contaminated wash water, for example. The commission has made no change in response to this comment.

Comment

HCPHES commented that the proposed deletion of the term "transfer" from the definition of processing would change the meaning of §330.7(a) relating to Permit Required. By this proposed definition change, transfer stations would no longer be required to obtain permits to operate. HCPHES stated that by their nature, transfer stations require agency and public review of the permitting process unless exempted due to location on an existing landfill or if they meet registration requirements under §330.9(b).

Response

The commission agrees with this comment and has reinserted the term "transfer" back into the definition of processing in response to these comments and also to be consistent with THSC, §361.003, Definitions.

Comment

HCPHES commented that the revised definition for medical waste should be revised to more closely follow the definition of special waste from health care-related facility found in 25 TAC §1.136. TCE commented that the definition for medical waste in §330.3(85) creates ambiguity. TCE recommended that for consistency the rule should utilize the definition in 34 TAC for hotel and that the term "related services to the public" is vague. TCE and HCPHES also commented that exemptions provided for single or multi-family dwellings, hotels, and other establishments that provide lodging should be removed from the rule. TCE stated that the exemption for farms and ranches is intended to, and should be revised, to include only animal waste.

Response

The commission revised the definition of medical waste to include bulk human blood products and bulk human body fluids, as stated in 25 TAC §1.136. The reference to 34 TAC is to distinguish farms and ranches from other types of industrial operations. The exemption for single and multi-family dwellings, hotels, and other establishments that provide lodging is consistent with other regulatory exemptions for individuals (e.g., household hazardous waste, conditionally exempt small quantity generators). The exemption for those who provide lodging is intentionally broad and makes further regulatory definition unnecessary. The commission does not agree that the exemption for farms and ranches is intended to apply only to animal waste and does not agree that the exemption should be limited to animal waste. The commission has not changed this part of the definition in response to these comments.

Comment

One commenter fully supported the definition of a solid waste as found in current rule as being supportive of recycling. The commenter also felt that the definition would allow the stockpiling of inert material prior to recycling.

Response

Staff concurs with the comment as long as the inert material is being stockpiled prior to recycling and meets other agency requirements for recycling in Chapter 328.

Comment

Within the definition of special waste, several commenters expressed concern that the segregation and disposal of treated medical waste identified as a special waste, will be unnecessarily burdensome and costly to health care facilities. APIC and THA stated that the term "special characteristics or properties" is vague, making compliance or enforcement impossible. APIC, DRMC, and THA stated that there is no scientific evidence that treated medical waste poses a greater risk than routine MSW, and requested that language which designates treated medical waste with special characteristics or properties as a special waste be removed.

Response

The commission believes that treated whole, unencapsulated hypodermic needles and syringes are a concern for landfill workers who may be unaware of a waste shipment's contents. Additionally, treated medical waste that is still in intact red bag packaging may cause unnecessary alarm and concern when accidently spilled or viewed from a distance. The commission believes that special handling of those waste streams is necessary, but acknowledges that categorizing those treated medical wastes as special wastes may unnecessarily increase the cost of disposal. The commission amends the proposal to provide that treated medical waste may be managed as routine MSW with

the condition that whole, nonencapsulated hypodermic needles or syringes or intact red bags that are sent to a landfill for disposal must be accompanied by a shipping document. This shipping document must include a statement that the medical waste shipment contains whole, nonencapsulated hypodermic needles or syringes or intact red bags, as applicable, and that the medical waste was treated in accordance with 25 TAC §1.136, Approved Methods of Treatment and Disposition. The purpose of this shipping document and accompanying statement is to give the landfill operator advance notice at the receiving gate that the incoming load of waste contains treated medical waste with whole, nonencapsulated needles or syringes and potentially visible intact red bags. With this advance notice, landfill operators and working face supervisors will be able to respond appropriately. The commission has deleted mention of treated medical waste from the definition of special waste in response to these comments.

Comment

Micro-Waste commented that the proposed definition of special waste from health care-related facilities should only include untreated waste and treated waste that still exhibit the characteristics of being able to transmit infectious diseases. TCE commented that the inclusion of definitions for both medical waste in §330.3(85) and special waste from health-care related facilities in §330.3(151) creates ambiguity and that the definition of the latter should more closely adhere to the definition provided by DSHS regulations.

Response

Special waste from health care-related facilities is defined in 25 TAC §1.132 as solid waste which if improperly treated or handled may serve to transmit infectious diseases. The approved methods of treatment and disposition listed in 25 TAC §1.136 include chemical treatments, thermal treatments, grinding, or maceration which is then followed by discharge into a sanitary sewer system or disposal in a sanitary landfill. After treatment, these wastes must still be properly handled, which may include disposal in a sanitary landfill. To remove any misunderstandings that may arise, the commission has deleted the definition special waste from health care-related facilities from this section. The commission has revised the definition of medical waste to reference the definition contained in 25 TAC §1.132.

Comment

HCPHES commented that the definition of storage should remain unchanged or at least remain consistent with Chapter 335 rules and that the addition of verbs such as keeping, accumulating, or aggregating unnecessarily creates ambiguity and potentially expands the definition of storage. However, HCPHES has found the term "temporary period" difficult to enforce and agreed with the change that a temporary period means no greater than 24 hours.

Response

The commission has removed the proposed time frame of storing solid waste for greater than 24 hours and instead retained the existing definition language regarding storing solid waste for a temporary period in order to retain consistency with the definition of storage within Chapter 335 and THSC, §361.003. The commission does not consider unloading operations to be storage if conducted within a reasonable period of time, typically up to 24 hours. Once unloaded however, storage begins immediately unless the waste is introduced directly into the processing or disposal unit.

§330.5. Classification of Municipal Solid Waste Facilities.

Comment

Lubbock commented that allowing arid exempt landfills to receive more waste will result in hardship to regional landfills and increase the potential for adverse health impacts.

Response

The amendments to §330.5(b) are intended to implement House Bill 1609, 79th Legislature, 2005. It would be inappropriate for the commission to consider whether allowing arid exempt landfills to receive more waste has a negative economic impact on regional landfills. No changes were made to the rules in response to these comments.

Comment

Lubbock commented that House Bill 1609 was intended to allow arid exempt landfills to serve the community where they are located, so the rules should prohibit these landfills from accepting waste from other communities outside the immediate area.

Response

House Bill 1609 did not restrict these landfills from receiving waste from communities outside the immediate area. No changes have been made to the rules in response to these comments.

Comment

Lubbock commented that allowing arid exempt landfills to receive more waste will be difficult for commission enforcement personnel to monitor, and it will increase the liability of customers of those landfills for latter cleanup projects.

Response

The commission does not expect the number of arid exempt landfills to increase as a result of these amendments, so the amount of commission resources needed to monitor compliance at these facilities is not expected to increase. The liability of landfill customers is not expected to increase, since landfill customers are generally not liable for disposing of the types of waste authorized to be disposed at a landfill. No changes have been made to the rules in response to these comments.

Comment

Lubbock commented that a Type I arid exempt landfill should not have to go through the expensive modification process to receive an additional 20 tons per day of construction and demolition waste.

Response

The commission disagrees with this comment, because a modification is warranted to ensure that appropriate permit provisions are included to properly manage the additional waste. No changes were made to the rules in response to this comment.

§330.7. Permit Required.

Comment

HCPHES commented that the additional language ("Except as provided in . . ."), prior to "no person may" within §330.7(a) unnecessarily creates ambiguity in this statement because the sentence continues to state that no person may engage in cer-

tain activities "unless that activity is authorized by a permit or other authorization from the commission." In this case, registrations, notification, exemptions are types of authorizations, and an exception to this sentence is not needed.

Response

The commission believes the additional language that refers to registrations, notifications, and activities exempt from permitting, registration, and notification clearly establishes the four levels of authorization for MSW management. The commission made no change in response to this comment.

Comment

HCPHES commented that there is an apparent disconnect between solid waste rules and air rules regarding the permit by rule for an animal crematory under §330.7(e). HCPHES agreed with the TCEQ that it is appropriate to create a permit by rule for an animal crematory under Chapter 330 but that language should be added to §330.7(e) that specifically requires compliance with Chapter 106, Subchapter A, General Requirements.

Response

The commission disagrees that language should be added to specifically require reference to 30 TAC Chapter 106, Subchapter A. The commission is proposing a minor change to the existing rule language for a permit by rule for animal crematories. The commission moved the requirements of §330.75 to §330.7(e) with two changes. To remove inconsistencies between the solid waste and air permitting programs, the commission removed the feed limitation of 1,600 pounds per day specified in §330.75(b)(1) and instead has added new §330.7(e)(2) to refer to the feed limitations specified for these types of incinerators in §106.494. Also, the commission removed the operating hours specified in §330.75(b)(11) and instead has added new §330.7(e)(12) to refer to §111.149. These changes allow for greater flexibility in the operation of animal crematories. This rule writing is essentially a streamlining of an existing rule that has been working well. No changes were made in response to these comments.

Comment

HCPHES commented that language should be added to §330.7(e)(2) to address compliance issues regarding animal carcass weights, that this language should require each incinerator load to be weighed by a scale that is certified biennially to NIST Handbook 44 standards by a third party who is licensed by the Department of Agriculture.

Response

The commission disagrees that language should be added to specifically require standards relative to animal carcass weights. The commission does not believe that the suggested language adding standards makes the rule more protective, and that it would only place an additional burden on the regulated community. The commission made no changes in response to these comments.

Comment

HCPHES stated that a crematory is defined in §106.494(a)(4) as "A structure containing a furnace used or intended to be used for the cremation of human remains." An animal crematory as defined in §330.3(6) addresses a facility for the incineration of animal remains. Section 106.494(b)(1)(D) states "Excluding crematories, the secondary chamber must be designed to maintain a temperature of 1,600 degrees Fahrenheit or more with a gas residence time of 1/2 second or more." HCPHES commented that since an animal crematory as defined in §330.3(6) does not meet the definition of a crematory in §106.494(a)(4), a minimum temperature of 1,600 degrees Fahrenheit and minimum gas residence time of 1/2 second is required. HCPHES expressed the belief that this subtle distinction between an animal crematory and crematory is easily lost and that language should be added that specifically requires that the secondary chamber to be designed to maintain a temperature of 1,600 degrees Fahrenheit or more with a gas residence time of 1/2 second or more. Also, language should be added that requires the installation and maintenance of equipment to continuously monitor and record secondary chamber temperature at the exit of the secondary chamber whenever the incinerator is operating. HCPHES stated that the exit temperature of the secondary chamber temperature (at the base of the stack) should not fall below 1,600 degrees Fahrenheit while incinerating carcasses and that for each operating period, the secondary chamber temperature must be at least 1,600 degrees Fahrenheit before the first charge of carcasses is loaded. HCPHES further stated that the combustion of the last charge of carcasses for any operating period must be complete before the secondary chamber burners are shutdown.

Response

The commission feels that the existing rule language specifying temperature is sufficient to ensure protection of human health and the environment and disagrees that language should be added to require continuous monitoring of incinerator temperatures. No changes were made in response to these comments.

Comment

HCPHES commented that language should be added to §330.7(e) to address compliance issues regarding ash storage weights and carcass storage weights, that this language should require that the ash and carcasses are weighed by a scale that is certified biennially to NIST Handbook 44 standards by a third party who is licensed by the Department of Agriculture.

Response

The commission does not believe that adding language to require ash and carcass storage weight standards would increase the protectiveness of the rule, sufficiently to justify the additional financial burden on the regulated community. The commission made no changes in response to these comments.

Comment

HCPHES agreed with the prohibition in §330.7(e)(7) that all chlorinated plastic shall be excluded, but commented that language should be added to §330.7(e)(7) to extend the prohibition of carcasses or animal parts that are either hazardous waste or medical waste to include research animals.

Response

The commission does not believe that adding language to prohibit disposal of research animals or hazardous waste at these facilities would increase the protectiveness of the rule. When appropriate, such language may be inserted as a permit requirement. No changes were made in response to these comments.

Comment

HCPHES commented that there are no provisions included in §330.7(e)(8) to address the wastewater generated from cleaning activities or storm water that may come into contact with storage

or processing areas and that language to address both wastewater and storm water issues should be added.

Response

The commission does not believe that adding language to require wastewater generated from cleaning activities or storm water that may have come into contact with storage or processing areas would increase the protectiveness of the rule. The proper discharge of such waters is subject to §330.7(e)(1), which cross-references §330.15(a), which prohibits unauthorized discharges. Discharges are also regulated by §330.15(h). No changes were made in response to these comments.

Comment

HCPHES commented that the nuisance prevention language of §330.7(e)(9) should also include the public health nuisance as defined in THSC, §341.011.

Response

Section 330.7(e)(9) provides a list of conditions that may cause a nuisance, and nuisance is further defined in §330.3. The definition in §330.3 also includes cross-references to statutory definitions, including the statute referenced in the comment. No changes were made in response to these comments.

Comment

CCAC commented that the proposed requirements in §330.7(e)(11) do not allow for buffer zone alternatives other than the required 50-foot buffer zone for a PBR for animal crematories. CCAC contends that there are circumstances in which a facility would be able to meet TCEQ standards while maintaining less than the required 50-foot buffer zone. CCAC has provided suggested language that would allow the executive director to consider alternative buffer zone distances for the PBR for animal crematories.

Response

PBRs are available to facilities that meet the requirements set forth in rule. This PBR is intended to provide an informal mechanism for facilities to operate within prescriptive requirements so as to be unlikely to have a negative impact on the public. As such, discretion, deliberation, and alternatives for a PBR application are inconsistent with the concept of a PBR. A variance to the buffer zone distance is not included because the procedure for operating under this authorization does not include commission review or public participation. Those facilities that cannot meet the criteria are eligible to apply for a full permit. As part of a permit application review, the executive director may consider alternatives to buffer zone requirements for MSW storage and processing facilities. The commission believes that buffer zones for these facilities are needed to limit negative impacts on the surrounding community, allow activities such as drainage control systems, and allow ingress and egress for emergency equipment. The commission believes that the required 50-foot buffer zone is an appropriate standard for these PBR facilities. No changes were made in response to these comments.

Comment

HCPHES commented that §330.7(e)(13) should require that documentation regarding the weights of carcasses received, as well as each individual incinerator load be generated and maintained.

Response

The commission does not believe that adding language to require documentation of the weight of each individual carcass incinerator load would increase the protectiveness of the rule sufficiently to justify the additional financial burden on the regulated community. No changes were made in response to these comments.

Comment

HCPHES commented that additional language should be added to §330.7(e)(14) to include all applicable operational requirements associated with a breakdown. This would include reporting and recordkeeping requirements as a result of emission event, maintenance, startup, or shutdown activities, and emergency shutdown procedures included in a site operating plan.

Response

The commission does not believe that adding language to require documentation of the incinerator operation would increase the protectiveness of the rule sufficiently to justify the additional financial burden on the regulated community. No changes were made in response to these comments.

Comment

HCPHES stated that §106.494(b)(2)(B) requires that the unit shall be operated in accordance with the manufacturer's recommended operating instructions, but that there are no requirements in §330.7(e)(17) regarding operator training. HCPHES commented that language should be added that requires incinerator operators be trained to operate the incinerator according to manufacturer's training requirements, that no untrained operators shall operate an incinerator, and that certification of training shall be submitted to the TCEQ Houston Regional Director as well as to the Air Permits Division in Austin and any air pollution control agency having jurisdiction.

Response

The commission does not believe that adding language to require documentation of operator training and submission of certifications would increase the protectiveness of the rule sufficiently to justify the additional financial burden on the regulated community. No changes were made in response to these comments.

Comment

Lubbock opposes relaxing the permitting process for Type IV landfills and Type IV arid exempt landfills because it is beyond the intent of House Bill 1609, will reduce environmental protection, and is unfair competition for regional landfills.

Response

The commission proposed a PBR in §330.7(f) for a Type IV arid exempt landfill, but did not propose relaxing the permitting standard for non-arid exempt Type IV landfills as stated by Lubbock. The commission disagrees with Lubbock's interpretation that the proposed rule would allow a Type IV arid exempt landfill to receive an additional 20 tons of construction and demolition waste. The commission agrees with Lubbock that the proposed PBR should not be created at this time, because House Bill 1609 is now being implemented in §330.5(b) to allow Type I arid exempt landfills to accept an additional 20 tons per day of construction and demolition waste in a separate Type IVAE landfill unit. In addition, there are still several issues to be resolved related to using a PBR authorization for a landfill, which would be a very different approach from the established practice of creating and reviewing a customized permit for a site-specific landfill. The

proposed option for a PBR for a Type IV arid exempt landfill is not adopted.

Comment

One commenter proposed that the agency add a new PBR for the long-term storage of construction debris in a "monofill" since the definition under §330.3 was silent on the duration an inert material could be stockpiled prior to recycling.

Response

The existing provisions in Chapter 328 allow reasonable options for storage of these types of material. No changes were made in response to these comments.

§330.9. Registration Required.

Comment

Representative Flores, TLWPA, CSP, CWA, and LES commented in opposition to the provisions in §330.9(g)(1) that allow Type V grease and grit trap facilities to obtain a registration rather than a permit if they represent a 10% recovery of material for beneficial use. TLWPA has provided some suggested changes to the proposed §330.9(g)(1). Representative Flores, TLWPA, CSP, CWA, and LES expressed the belief that the 10% recovery standard in §330.9(g)(1) is not attainable. Representative Flores and TLWPA expressed the belief that the 10% recovery standard is not enforceable and creates inconsistency in the regulatory process. TLWPA, LES, and CWA expressed the belief that the rule effectively denies the public meaningful participation in the public involvement process. TLWPA and CSP provided data regarding the amount of grease in grease trap waste processed and recovered in various facilities in Texas. TLWPA and CWA contended that the average amount of grease that can be recycled is 1% to 3%. Existing rule mandates that operators of registered facilities keep records to justify, on a quarterly basis, that 10% of the incoming waste is processed to recover recycled products. Under existing §330.71(e)(6)(S) and proposed §330.219(b)(9), if 10% is not achieved in any two quarters during the year, the registration terminates and the facility must obtain a permit. TLWPA indicated that a problem is that the agency does not know the correct recycling achievement rate because the agency does not have the necessary resources to monitor these facilities and know whether they are actually recovering a minimum of 10%.

TLWPA indicated that another problem with provisions in §330.9(g)(1) is that some of the registered Type V grease and grit trap facilities claim to fulfill the 10% requirement by transporting a certain amount of their waste streams to compost facilities and are, therefore, not conducting the recycling on site. Rather, they are simply diverting a portion of their waste stream to another site for disposal. TLWPA expressed the belief that this should not be considered recycling. In addition, TLWPA indicated that many facilities are adding large volumes of lime and polymer to the waste stream in order to bulk up the waste. This additional material changes the total volume of the waste processed and makes it increasingly more difficult to determine if and when the 10% recycling requirement is met.

TLWPA stated that in response to House Bill 1791 from the 79th Legislature, 2003, the TCEQ adopted regulations which require operators who compost grease trap waste to obtain a permit. Thus, the regulations require a permit to compost grease trap waste but allow facilities that process grease trap waste to obtain a registration in lieu of a permit if they recycle 10%. TLWPA stated that processing of grease trap waste creates all of the same issues as composting grease trap waste, including odors, vectors, and the need to protect groundwater supplies. TLWPA expressed the belief that for consistency it makes sense to close the gap and require permits for both processing of grease trap waste and composting of grease trap waste.

TLWPA stated that the major difference between a registration and a permit is the public's right to a contested case hearing if they object to the permit application. TLWPA stated that Type V grease and grit trap facilities have the potential for strong odors and without proper protections can have a very negative impact in a local neighborhood. TLWPA stated that applications subject to public oversight often result in tighter, more protective permits. TLWPA stated that applications for a permit give affected persons a legal forum to raise questions and, if necessary, protest the application. TLWPA stated that under a registration scenario, this right is taken away. TLWPA stated that while the neighbors can attend a public meeting and voice their concerns, there is no formal process to protest the placement of the facility in their neighborhood for a proposed Type V grease and grit trap facility that has applied for a registration in lieu of a permit.

Response

The commission agreed with additional comments received from several elected officials and individuals at the March 1, 2006, commission agenda in support of the permit exemption based on 10% recovery of material for beneficial use. These persons stated that the 10% recovery of material, not just grease, is greater than 10% and that allowing a registration encourages recycling. These persons also stated that there is no design, operation, or enforcement gain in requiring a registered facility to become a permitted facility. These commenters supported the annual reporting requirement proposed in §330.219(b)(9) and urged the commission to adopt §330.9(g) as proposed in the September 9, 2005, issue of the *Texas Register*. The commission adopts §330.9(g) consistent with the proposal.

Comment

Chambers requested that §330.9(a) be revised to state that an operator may not commence operation under a registration by rule, where registration forms are required to be submitted to the agency, until the TCEQ issues a registration number. Chambers requested that proposed §330.9(m)(1) be revised to specify that a registrant may not commence operations until it receives a registration number issued by the TCEQ even if this period extends beyond 60 days from submittal of the registration form.

Response

The commission establishes in §330.9 that registrants by rule for medical waste mobile treatment units provide the agency information on the activity at least 60 days prior to commencing operations or before a registration issued under the former rules expires. The commission has revised the rule to add a new §330.9(m)(3), which states that the executive director will send a copy of the registration form, annotated with an assigned registration number, to the owner or operator. This new paragraph supports the requirement in §330.1221(b) that persons claiming a registration by rule shall maintain a copy of the registration form, as annotated by the commission with an assigned registration number, at their designated place of business and in each mobile treatment unit used in treating medical waste.

Comment

Chambers stated that a registration by rule is not appropriate for owners or operators of mobile treatment units conducting on-site

treatment of medical waste, and that requirements should be similar to registration for a mobile liquid waste processing unit. Chambers recommended that the rule provide for a registration with a detailed application for TCEQ review, including design plans and specifications of the unit, public notice, and a field demonstration that the unit will function appropriately prior to issuance of the registration.

Response

The commission does not have evidence that mobile medical waste treatment units are confronted with the technical issues associated with other types of MSW processors. The commission has made changes to other sections of the chapter to require more complete information from the registrant. The commission does not believe that a detailed application and technical review process is justified by the relatively low level of risk posed by these units. The treatment methodology is approved by DSHS and ongoing testing requirements provide a demonstration that the units are operating as intended. The commission has made no changes in response to these comments.

Comment

Chambers commented that the rule should require a list of all solid waste, liquid waste, or mobile waste units that the owner or operator has owned or operated within the past five years, and a list of any final enforcement orders, court judgments, consent decrees, and criminal convictions within the last five years relating to compliance with applicable legal requirements relating to the handling of solid, liquid, or medical waste. Chambers suggested that the rule require owners and operators of mobile medical waste treatment units to provide a list of customers and locations where treatment will occur, hours of operation, and that hours of operations should be restricted, as with other MSW facilities, to afford TCEQ an opportunity to inspect operations. Chambers requested that the rule be clarified as to whether individual units need to be individually registered, or whether a registrant can obtain multiple registrations for multiple units. EHMS suggested that the rule be revised to specify the requirement for annual renewal, and that registration requirements include compliance history for the registrant and parent company, and the submittal of a certificate of compliance with the regulations applicable to mobile waste treatment units, for each hospital serviced over the previous year. EHMS also suggested the rule include provisions for revocation of the registration for good cause.

Response

The rule requires evidence of competency, consistent with other MSW applications, and the commission has revised the rule to require that a compliance history be submitted as part of the registration. The rule does not restrict operating hours, because flexible hours are needed to serve some generators and the risk posed by not restricting operating hours is relatively low. The commission believes that the annual renewal requirements reduce the need for additional restrictions. It is not appropriate to include a revocation procedure for a registration by rule which is not granted, and therefore, cannot be revoked. As compliance with existing regulations is a condition of operation subject to enforcement, a requirement for certification of compliance with existing rules is not needed and has not been added.

Comment

EHMS recommended that §330.9(n) specifically cite the applicable regulatory requirements for a Type V registration for the treatment of off-site medical waste.

Response

The commission believes that the applicability of Subchapters B and Y is clear and has not changed the rule in response to these comments.

§330.13. Waste Management Activities Exempt from Permitting, Registration, or Notification.

Comment

HCPHES suggested adding language to §330.13(h) to include a requirement that the drying operation also be in compliance with applicable federal, state, and local regulations and that the discharge of grit trap waste material not cause the pollution of surface or groundwater, resulting from the drying process or from the temporary land application of material for the purpose of drying. HCPHES stated that inserting the underlined additions would further regulate and more importantly clarify that surface and groundwater must be protected from pollution during the drying process and as well as the disposal operation.

Response

The rule has been changed to require that these wastes be "dried" and disposed of in compliance with applicable federal, state, and local regulations. The commission has not changed the remainder of §330.13(h) in response to the comment because the suggested additional language is duplicative of §330.15, General Prohibitions, and therefore not necessary. The commission has made no other changes in response to this comment.

§330.15. General Prohibitions.

Comment

TCE and several individuals commented that the commission should ban the disposal of electronic waste in landfills and incinerators and encourage recycling of electronic waste.

Response

The commission encourages recycling of these types of materials in other agency rules and outreach programs. The preference for recycling these wastes does not justify prohibiting their disposal, which is allowed under state and federal law. No changes were made in response to these comments.

Comment

TDS requested that the commission allow for the development of specially designed e-waste landfill cells that can accept regulated quantities of hazardous e-waste and the residue from e-waste recycling facilities for disposal.

Response

The commission's Chapter 335 rules provide for permitting facilities to dispose of hazardous waste, including hazardous electronic waste. It would be inappropriate to amend the Chapter 330 rules governing MSW to provide for a permit to dispose of regulated hazardous waste. No changes were made in response to these comments.

Comment

TCE and several individuals stated that Texas should stop the export of toxic electronic waste to developing nations in accordance with international law, such as the Basal Convention.

Response

The commission regulates the transportation and disposal of electronic waste in Texas. Electronic waste that is regulated hazardous waste is regulated under Chapter 335 and other electronic waste is regulated under Chapter 330. Electronic equipment that is in the process of being refurbished or reused is not regulated as waste under either of these programs. A generator or transporter of electronic waste can be subject to enforcement by the commission for transporting or disposing of electronic waste in violation of the commission's rules. Whether toxic electronic waste is being exported to developing nations for disposal is outside the scope of this rulemaking. No changes were made in response to these comments.

Comment

TCE and several individuals stated that Texas should recycle its own obsolete electronic equipment.

Response

The commission is involved in several programs to recycle and properly dispose of its electronic equipment. Information regarding these efforts, and efforts to assist others, is available by contacting the commission's Small Business & Environmental Assistance Division. No changes were made in response to these comments.

Comment

TCE and several individuals requested that Texas prohibit the use of prison labor in electronics recycling, because this practice exposes prison guards and prisoners to high levels of toxins.

Response

The commission does not have authority to regulate worker safety issues related to recycling electronic equipment. Regulating worker safety issues related to recycling electronic equipment is outside the scope of this rulemaking. No changes were made in response to these comments.

§330.23. Relationships with Other Governmental Entities.

Comment

An individual commented that the reference to a Federal Aviation Administration guidance document should be updated in §330.23(c).

Response

The commission agrees with this comment and has made corresponding changes in the rules.

Subchapter B: Permit and Registration Application Procedures

§330.57. Permit and Registration Applications for Municipal Solid Waste Facilities.

Comment

HCPHES commented that the preamble explains that no substantive changes have been made to §330.57, however, current §330.61 gives the executive director the discretion to determine if a land-use only public hearing is necessary while the revised language allows an owner or operator applying for a permit to request such a hearing with the executive director deciding if such a request is appropriate. HCPHES requested that §330.57 be revised in keeping with the current rule to state that an owner or operator applying for a permit may request such a hearing or the executive director may determine that the land-use only determination is appropriate. Also, HCPHES further requested that language in the current rule allowing the executive director to request additional data if such data is reasonably required to allow a decision to be made remain in the proposed rules to allow the executive director discretion to ask for additional information if necessary.

Response

The rule has not been changed in response to this comment, because the rule already includes language which allows the executive director to determine if a land-use only determination is appropriate. The provision that the executive director may request additional data if such is reasonably required to allow a decision to be made already exists in §305.45(a)(8)(C) and need not be restated here.

Comment

CAPCOG expressed the concern that the proposed new §330.57(e)(2) is not specific as to when an applicant must furnish Parts I and II of the application to the regional COG and when the COG is to submit its determination.

Response

The commission added a phrase requiring submission of Parts I and II to the regional COG at the time the application is submitted to the commission along with any subsequent revisions to Parts I and II. The schedule for the COG to submit its determination will be determined in the grants contract. The commission made no additional changes in response to the scheduling comment.

Comment

TCE supported the requirement that applications be available on the internet. The costs would be minimal. Most, if not all, of the applications are held by the applicant in electronic format already. The regulated community already has an extensive Web presence.

Other commenters expressed concern over the feasibility of proposed new §330.57(i) to require the owner or operator to post a complete copy of a permit, registration, amendment, or modification application, including all revisions, to a publicly accessible Web site.

BME estimated that the cost of posting the application on the internet could range from $7,500 to $20,000 per application, which would lead to additional statewide costs in the range of $1.79 million to $4.76 million per year. BME commented that these costs outweigh the stated savings in the PUBLIC BENEFITS AND COSTS section of the proposed preamble; the rule does not provide information regarding the type of Web site, download bandwidth, or amount of Web traffic necessary; and the rule will not provide protection to human health or the environment.

RMR stated that many small communities that own and operate landfills do not have public access internet sites. This requirement would be a hardship and excessive cost for such communities. RMR suggested that the commission only require those owners or operators to post on the Web where the community has a preexisting Web site. RMR also stated that the cost would be very expensive for most local governmental entities. In cases where the cost of posting is prohibitive, other forms of public notice will be adequate.

WMTX stated that requiring each owner or operator to maintain a Web site creates a significant expense. Permittees will have to pay a consultant to create, update, and maintain a Web site. Facilities that rarely or infrequently file permit amendments or modifications will be hurt the most. These facilities will have to

maintain a Web site with nothing to post or they will incur the cost of creating a new site each time they amend or modify their permit or apply for a new one. The best host for the applications is TCEQ's Web site. TCEQ will most likely always have a Web site, while some facilities may only create one for the posting requirement. TCEQ already has a Web site, with the capabilities and incentive to update and maintain it. Internet posting should be limited to applications for new permits and major amendments and major modifications to existing permits. Applications for minor facility changes are not likely to draw enough public interest to justify posting the application.

Response

The commission does not believe that this requirement will pose an unreasonable expense to owners or operators, including smaller communities. Local governmental entities are able to obtain an adequate Web site for a reasonable cost because they are a governmental entity. An adequate Web site with appropriate bandwidth and space can be created for relatively inexpensive costs. In many cases, larger facilities already maintain Web sites and therefore would not have to incur the cost of creating new Web sites. The commission feels that this requirement will provide more members of the public with access to applications of interest and aid in informing the public. However, the commission has revised the rule in response to these comments to require only applications that require public notice to be posted on the internet. The rule has also been changed to exclude Type IAE and Type IVAE landfill permits from internet posting requirements.

Comment

NSWMA stated that the commission should require applicants to provide a copy of their application in PDF format for the commission to post on its Web site. Some applicants may not have a site already and should not have to create one just for public review of the application. The public is already familiar with the TCEQ's Web site. Posting on the TCEQ's site will provide a central, easily accessible location for the public's reference. If there are problems, the commission's staff will be better equipped to fix them. NSWMA also requested that the rule clearly state that posting is for informational purposes only.

WMTX has the concern that posting on the internet will be interpreted as a public notice requirement. Posting should be considered a convenience. Web site crashes are too common and uncontrollable. TCEQ should expressly state that posting is a public convenience and not a requirement for notice of the application.

Allied stated that the requirement should be to post applications on the commission's Web site, rather than individual Web sites. This would avoid the need to create and/or maintain a Web site which may be beyond the financial capability of some owners/operators. The commission's Web site is also one that is already familiar to the public. The rule should clarify that the posting is for informational purposes only and does not constitute a public notice requirement.

Response

The commission disagrees that all applications should be posted on the commission's Web site. The commission believes it is the owner or operator's responsibility to inform the public and therefore, the application should be placed on a Web site created and maintained by the owner or operator. The commission believes that the internet is sufficiently reliable for this purpose, and will consider the owner or operator to have fulfilled the requirement if the materials are provided in a widely-accessible electronic format on a reliable hosting service. An owner or operator should not be penalized for not posting the application because of unforeseen issues with the Web site. The requirement to post an application on the internet is separate from the public notice requirements identified in other parts of the chapter and detailed in other chapters of commission rules. The commission does agree with the comment that posting should be considered a convenience. The information posted on the internet is not the controlling version of the application or permit, and §330.57(i)(1) has been revised accordingly.

§330.59. Contents of Part I of the Application.

Comment

Commenters requested clarification about whether it was necessary to list mineral interest owners on a map of the facility property, and whether mineral interest owners will be considered affected persons.

Response

The proposal to designate mineral interest holders on the land ownership map is reasonable since the commission is only intending to notify mineral interest owners under the facility. Designating mineral interest owners on the map could be done by including a reference on the map indicating that such owners are listed in the property owner list. The decision about who will be considered an affected person will be made on a case-by-case basis for each permit application. However, the permitting process is not the appropriate forum to address issues regarding the protection of mineral interests or access to minerals under a proposed site. No changes were made in response to these comments.

Comment

OPIC requested that the commission not delete the current requirement in §330.62(c) that lease agreements contain specific provisions delineating mineral rights attached to the property.

Response

The Chapter 330 rules are being amended, in part, to update specific provisions in light of recent commission decisions involving mineral rights issues. The commission has decided that issues involving the protection of mineral rights or access to minerals are not matters which the commission will consider during the MSW permitting process. Deleting the requirement that lease agreements address the mineral rights attached to the property is consistent with the commission's position on how mineral interests will be addressed in the context of MSW permit applications. No changes were made in response to these comments.

Comment

OPIC commented that the commission has the jurisdiction and duty to address any interference the disposal of waste may have upon a person's mineral right under THSC, Chapter 361, because the purpose of the Solid Waste Disposal Act is to safeguard the health, welfare, and physical property of people. WMTX commented that no provision of the Health and Safety Code requires or allows TCEQ to consider the mineral estate in the context of MSW permitting. WMTX commented that if the legislature had intended to delegate authority to the TCEQ to consider mineral interests in the MSW program, it would have explicitly done so as it has in other permitting contexts.

Response

The commission's jurisdiction under THSC, Chapter 361, does not extend to preventing interference with mineral rights. As noted by the commenter, the legislature has expressly provided the commission with the authority to consider mineral interests in other permitting areas. Because no express statutory authority to consider mineral interests exists within the MSW program, the commission concludes that its authority to safeguard property does not include the protection of mineral interests. No changes were made in response to these comments.

Comment

Several commenters recommended that the rules specify that owners or operators must include an agreement with the mineral rights holders as part of the demonstration that they have a sufficient interest in the property. TCE commented that applicants should be required to own any relevant mineral rights in order to ensure land use compatibility.

Response

The commission does not agree that a permit applicant should be required to own the mineral rights under a site, or have an agreement with the mineral rights holders, in order to demonstrate a sufficient interest in the property. As discussed in response to other comments on this issue, the commission's authority under the Solid Waste Disposal Act does not extend to the protection of mineral rights. As a result, the commission will not require permit applicants to own or control the mineral interests in order to demonstrate a sufficient property interest. A demonstration of a sufficient interest in the surface estate will be adequate for the purpose of complying with §330.67. Issues related to the protection of mineral rights or access to the minerals underlying a site are not matters which the commission will address in the context of an MSW permit application. No changes were made in response to these comments.

Comment

OPIC, GDHM, and TCE commented that they support the requirement for mailed notice to mineral interest holders. Several commenters requested that the commission delete the requirement for mailed notice to mineral interest holders because: the district courts and the Railroad Commission are vested with the authority and expertise to consider mineral rights issues; there is no statutory authority for requiring notice to these individuals; the requirement is contrary to the statutory requirement in THSC, §361.081 regarding who is required to receive notice; the information on mineral interest owners from county deed records is likely to be inaccurate; identifying mineral interest ownership from county deed records will be expensive and time-consuming; and requiring applicants to provide information on mineral interest holders will likely result in substantial procedural issues. Allied commented that providing notice provides no additional protection to mineral interest holders. NSWMA also commented that if the commission intends to eventually require notice to mineral interest holders in all permitting programs, it should be done as a global change instead of an industry-by-industry basis. WMTX commented that newspaper notice should suffice to place mineral interest holders on notice. IESI recommended, as an alternative, that applicants only be required to provide a list of the mineral interest holders under the facility.

Response

The commission agrees that it is not the appropriate authority to address issues involving the protection of mineral rights. Nevertheless, it is appropriate for MSW permit applicants to provide notice to mineral rights holders to ensure that these individuals are aware that an MSW site is proposed for the property over their mineral interest. The commission has the authority to require notice to mineral interest holders under THSC, §361.011, which gives the commission the powers and duties specifically prescribed by THSC, Chapter 361 and all other powers necessary or convenient to carry out those responsibilities to proscribe the procedures for processing an application. The THSC, §361.081 requirement regarding who receives the notice of hearing does not prohibit the commission from requiring notice of the application to mineral interest holders. The proposal to require applicants to obtain property owner and mineral interest owner information from deed records has been changed to require property and mineral interest owners to be derived from real property appraisal records. This change was made to make the rule consistent with THSC, §361.081(a) for identifying property owners by real property appraisal records.

Comment

WMTX requested that §330.59(c)(3)(B) be revised to specify that using the county records as they exist on the date the application is filed will comply with this section, and that notice will not be defective if a landowner did not receive notice because the landowner was not listed in the county deed records.

Response

The commission agrees that applicants should be able to rely on the real property appraisal records as of a certain date for compliance with this rule. The commission has changed the rule accordingly.

Comment

GDHM commented that the staff does not recognize the rights of mineral owners to use the surface estate. GDHM also commented that if applicants must show a sufficient interest in the surface estate to conduct proposed landfill operations, they should also be required to show the required use cannot be prohibited or interfered with by a mineral interest owner just as they must show that no easement, lease, or license will interfere with the proposed site.

Response

The commission understands that the mineral estate is the dominant estate under Texas property law. However, as discussed in response to other comments, issues related to the protection of mineral interests are not matters which the commission will consider as part of the MSW permit review process. The commission will not require that permit applicants control or own the mineral interests under a site. No changes were made in response to these comments.

Comment

GDHM commented that if the commission can assert jurisdiction to prevent the drilling of wells by mineral owners, then mineral owners must have the right to protect their rights in permit proceedings.

Response

The commission does not assert that it has jurisdiction to prevent a mineral interest holder from exercising his or her mineral rights. The commission does not consider the permitting process the appropriate forum to address issues related to the protection of

mineral interests or the access to minerals. No changes were made in response to these comments.

Comment

GDHM commented that if the rules either expressly or effectively prohibit mineral owners from developing their minerals under landfill sites, the commission would be denying these owners their property without just process or just compensation in violation of the Texas and United States Constitutions.

Response

The commission does not intend for these rules to prohibit mineral owners from exercising their mineral interests, or for the MSW permitting process to become a forum for protecting mineral interests. No changes were made in response to these comments.

Comment

TCE commented that planned resource extraction activities should be considered by the TCEQ in determining whether a proposed site is a compatible land use.

Response

The commission does not consider the permitting process the appropriate forum to address issues related to the protection of mineral interests or the access to minerals. No changes were made in response to these comments.

Comment

TDS commented that the goal should be identification of the controlling interests in the mineral estate and not identification and notification of each and every minority interest owner.

Response

The commission disagrees that notifying mineral interest holders should be limited to the controlling interest. The commission considers it appropriate to identify and notify each mineral interest holder identified in the real property appraisal records. No changes were made in response to these comments.

Comment

TDS commented that the permit application should identify whether the mineral estate has been severed from the surface estate to put the owner/operator, the TCEQ, and other entities that will rely on the landfill's approved capacity on notice that the issue of developing the mineral rights may arise at a later date.

Response

The commission considers the requirement to identify the mineral interest holders under a site sufficient to indicate that the mineral estate has been severed from the surface estate. No changes were made in response to these comments.

Comment

TDS commented that the commission should negotiate a new memorandum of understanding with the Railroad Commission that: 1) provides notice to TCEQ of the filing of a mineral interest permit, along with the location of the area in digital format; 2) allows the TCEQ to check these applications against the known locations of landfills; and 3) requires the TCEQ to respond in writing whether the boundaries of the proposed mineral resource development permit falls within the bounds of a permitted or registered facility.

Response

The commission is presently working with the Railroad Commission on an amended memorandum of understanding. There will be a public comment period on the revised memorandum of understanding at a later date. No changes were made in response to these comments.

Comment

Allied commented that any conflicts concerning the use of the surface between a waste disposal operator and a mineral operator are matters of real property law to be resolved by private agreement or the courts.

Response

The commission agrees that disputes between the owner of the surface estate and the mineral interest holders are matters to be resolved by the courts or by private agreement. The commission does not intend for the permitting process to become a forum for addressing these disputes. No changes were made in response to these comments.

Comment

WMTX commented that requiring applicants to identify and notify mineral interest holders will lead to disputes that are beyond TCEQ's statutory authority to resolve.

Response

The commission does not expect the number of disputes between surface estate owners and mineral interest holders to be materially affected by the new notice requirement. In the event that disputes do arise, the commission does not intend for the permitting process to become a forum for addressing these disputes. No changes were made in response to these comments.

Comment

A commenter stated that §330.59(h)(1) should be deleted since the processing of MSW applications is funded by solid waste disposal fees and charging a separate application processing fee is unwarranted. RMR commented that $100 is a very reasonable fee for processing applications, but that the $50 fee for mailing notice should not be charged for applications that do not require notice or in cases where the applicant mails the notice.

Response

The application processing fees listed in §330.59(h)(1) are an existing requirement in §305.53(a) and are consistent with other TCEQ program areas. No changes were made in response to these comments.

§330.61. Contents of Part II of the Application.

Comment

WMTX commented that the newly revised site operating plan rules expressly provide that a facility's waste acceptance rate is not intended to be a limiting parameter of a facility's permit (see previous §330.113(h); proposed §330.125(h)). As required in the site operating plan rules, waste acceptance rate information is strictly for obtaining the correct balance of on-site equipment, personnel, and other site operating plan provisions relative to the amount of waste being received (see 29 TexReg 11065). The principle in the site operating plan rules--that estimates of waste acceptance rates are not intended to be limiting permit parameters--should be carried forward in subsection (h).

WMTX further commented that additionally, transfer stations, like landfills, should only be required to estimate their waste accep-

tance rate. As proposed, §330.61(b)(1)(B) would require transfer stations to specify a firm maximum acceptance rate for a five-year period. Given the difficulties inherent in projecting waste acceptance rates, such a requirement is not likely to yield information of much use to TCEQ or the general public. Transfer stations will be forced to over-estimate their expected maximum waste acceptance rates for fear that if rates are underestimated, the facility will be in violation of its permit or registration. These regulations should also clarify that the requirement for a five-year forecast is a one-time requirement. Facilities should not be expected to update their waste acceptance plans every five years or, moreover, every year (i.e., this is not a five-year rolling projection).

Response

The commission agrees that estimated waste acceptance rates are not intended to be a limiting parameter for a landfill permit as is clear by reading §330.61(1)(C) in conjunction with §330.125(h). It is appropriate for waste acceptance rates to be a limiting parameter of a transfer station authorization because the rate of waste transferred has a high potential to impact the public and these facilities are generally not subject to term limits. The commission believes that predicted maximum waste acceptance rates do yield useful information, both to commission staff reviewing submittals and to the general public. The commission agrees that the five-year forecast is not a rolling projection and need only be updated whenever the forecast is exceeded. The commission made no changes in response to these comments.

Comment

RMR commented that the §330.61(d)(2) requirement that a map be included in the application identifying "locations of all interior facility roadways, and for landfill units, interior facility roadways that provide access to all fill areas . . . " is unreasonable.

Response

The commission agrees and has changed the paragraph to read "general locations of main interior facility roadways, and for landfill units, the general locations of main interior facility roadways that can be used to provide access to fill areas . . .."

Comment

Commenters stated that the requirements of the proposed §330.61(h) go beyond the stated purpose to determine if a facility will "adversely impact human health or the environment." Commenters further stated that the distances for which information was requested were unreasonable. Additionally, the commenters stated that the second sentence of §330.61(h) is redundant and should be deleted.

Response

The stated purpose of §330.61(h) is to determine impacts on the surrounding area. The commission believes the information requested is reasonable to support that purpose. The commission proposed the distances to give definition to existing requirements that lacked boundaries. The commission disagrees that the second sentence of §330.61(h) is redundant and did not delete the sentence. The commission agrees with the suggested language change in §330.61(h)(1) and has revised the first sentence of the paragraph to read "if available, a published zoning map for the facility and within two miles of the facility for the county or counties in which the facility is or will be located." The commission did not change the wording in §330.61(h)(3) as requested.

Comment

Commenters requested that §330.61(k)(3)(B) be revised to refer to storm water requirements and not to wastewater requirements.

Response

The commission agrees with these comments and has replaced "wastewater" with "storm water."

Comment

Commenters stated that the role of the COG needs clarification.

Response

The commission agrees that clarification is necessary and has revised §330.61(p) to state that a COG or a local government review letter is not a prerequisite to a final determination on a permit or registration application.

§330.63. Contents of Part III of the Application.

Comment

HCPHES indicated that no rationale was provided to change the threshold in proposed §330.63(c)(1)(C)) from "significantly altered" to "adversely altered."

Response

The commission made this change to make rule language consistent with the language provided in guidance (RG-417, Guidelines for Preparing a Surface Water Drainage Plan for a Municipal Solid Waste Facility). It is more appropriate to consider changes in drainage relative to their impact on the environment and the public. No change is made in response to this comment.

Comment

WMTX commented that §330.63(c)(1)(C) and (D)(iii) and §330.305(a) do not specify the extent (i.e., scope) of existing drainage patterns that should be analyzed, nor do the proposed regulations specify or provide guidance as to what constitutes adverse alteration of drainage patterns.

Response

The commission believes that the plain meaning of the term "adverse" is sufficient for purposes of regulation but may elect to elaborate in future revisions to existing guidance. The commission made no change in response to these comments.

Comment

HCPHES commented that §330.63(d)(1)(B) needs an "and" at the end of the semi-colon.

Response

The commission appreciates this comment and made the correction.

Comment

HCPHES commented that §330.63(d)(3)(B) should end with "and" instead of "and/or" because all those conditions are required.

Response

The commission appreciates this comment and made the correction.

Comment

HCPHES commented that the term "landfill unit" is used in many parts of the rules and should be changed to municipal solid waste

landfill unit which is a defined term. The term "landfill" should be correctly used. Section 330.63(d)(1)(A) uses the term "solid waste management facility" which is not a defined term. Section 330.63(d)(4) uses the term "compost unit" which is not a defined term either. A search for these terms should be done throughout the rule to ensure that an already existing definition may not be more appropriate or if these should be defined.

Response

The commission believes that certain words such as "unit," "facility," "solid waste," and "landfill," are adequately defined so that the meaning of a phrase containing these words is sufficiently clear, needing no further definition. The commission has made no change in response to this comment.

Comment

Lubbock commented that the reference in proposed §330.63(d)(5) and (5)(A) to §330.5(c) regarding the arid exemption application might be a typo because the criteria for qualifying for the arid exemption is contained in proposed §330.5(b).

Response

The commission appreciates this comment and has corrected the cross-references.

Comment

HCPHES stated that the requirements for variances in §330.63(d)(10)(C)(i) and §330.603 are specified as "if not contrary to public health and safety." Consistent with other provisions, HCPHES commented that this should include "if not contrary to public health, welfare, environment, or safety."

Response

This language was not intended to be more limited than the policy underlying THSC, Chapter 361 as stated in THSC, §361.002. The commission has revised the rule language to follow the language in §361.002(a) "to safeguard the health, welfare, and physical property of the people and to protect the environment."

Comment

NAG commented that the rules are too vague for the authorization of a bioreactor cell. More data should be required from the public and the industry and the rules should be amended accordingly. There are no requirements to determine what the ultimate methane yield will be when a bioreactor cell is proposed. There are no requirements to determine the gas capturing efficiency of a proposed bioreactor cell.

TCE commented that the issues surrounding bioreactors are complex, and the time is not available in the context of this rulemaking to establish the new regulatory scheme necessary for the regulation of these facilities. The definition of bioreactor included in the proposed regulations does not recognize the distinct characteristics of such facilities in comparison to landfills. Virtually any landfill which recirculates its leachate could claim to be a "bioreactor" under the proposed definition. The proposed regulations fail to address many of the issues related to bioreactor design and operation. Measures must be taken to prevent over-saturation of the landfill mass, and regular monitoring of the landfill head must be performed, in order to prevent a dangerously increased head over the liner system that will result in landfill leaks. Yet, these steps are not required at a bioreactor. Narrower groundwater monitoring well spacing is justified by the increased quantity of fluids in the cell, yet this is not required. Further, since some increased internal pressure is unavoidable with bioreactors, closer scrutiny of the geotechnical strength of the landfill walls is necessary, and double-liners with leak detection systems should be required.

Response

The commission has removed the authorization for bioreactors from Chapter 330 due to concerns regarding design, operation, and conformance with the federal RCRA, Subtitle D program.

Comment

RMR commented that the requirement to have a soil boring plan approved by the executive director prior to the subsurface investigation has been deleted in the proposed rule. RMR stated that the early review of the soil boring plan is important to the development of a landfill permit application and that delay of review until the time of application submittal could delay application processing and be costly to the applicant if additional subsurface work is necessary. RMR requested that language be placed at the end of §330.63(e)(4) that states that the boring plan, including locations and depths of all proposed borings, shall be approved by the executive director prior to initiation of the work.

Response

The commission agrees with these comments and has revised the paragraph to require that the boring plan, including locations and depths of all proposed borings, be approved by the executive director prior to initiation of the work.

§330.69. Public Notice for Registrations.

Comment

HCPHES commented that proposed §330.63(f)(2) and (6) which require a description of any plume or contamination that has entered the groundwater from an MSW unit at the time the application was submitted, should also include an ongoing duty to supplement this information through the application process. HCPHES expressed the belief that groundwater contamination is an important issue that should be considered in any permit application and that information should not be precluded merely because it came forward after the application was submitted.

Response

The commission concurs that groundwater monitoring is important. It is in the applicant's best interest to ensure that groundwater characterization is correct and accurate at the time of permit issuance. While the commission agrees that it is appropriate to consider the most updated information, it is also reasonable for staff to process an application based on representation of information at a particular time. The existing rules allow the commission to consider information that becomes available after technical review is completed and to deny the application or allow an applicant to address the new information. No change was made in response to this comment.

Comment

The Travis County Commissioners Court requested that notice to local officials and citizenry be improved by sending notice to the affected county judge and municipalities immediately upon receipt of an application instead of after an application is administratively complete (for hazardous waste disposal sites, landfills, and other solid waste facilities).

Response

It appears that these comments was submitted for several rule projects, but this response will focus on the issues within the scope of this rulemaking related to notice of applications for MSW facility registrations. Since applications for registrations are not subject to a separate administrative review, the timing for notice in the rule is not triggered by an application being administratively complete. Instead, notice must be provided within 45 days of receipt of the application. The 45-day requirement was created so that the notice of opportunity to request a public meeting could be provided, any resulting public meeting could be held, and comments could be considered before processing would be completed. The 45-day period allows a reasonable amount of time to resolve issues related to the content of notices and to make arrangements for publications and mailings. No changes were made in response to these comments.

Comment

The Travis County Commissioners Court requested that applicants mail notice of the application to the closest neighborhoods within one or two miles of the facility. Many individuals commented that property owners and residents within a mile should be notified of major changes at landfills.

Response

The rule requires mailed notice for registrations by cross-referencing Chapter 39 (§§39.501(c), 39.418, 39.413(1), and 330.59(c)(3)), which results in mailed notice being provided to landowners within 500 feet of the facility consistent with notice provided for permits. Providing this mailed notice in conjunction with the mailed notice to others listed in §39.413, notice by posting signs, and notice by publication provides adequate notice to those who could be affected by a registered facility. The public notice requirements for changes to landfill permits are mainly located in Chapter 39, but Chapter 39 does rely on a cross-reference to landowners named on the application map, which includes property owners within 500 feet under adopted §330.59(c)(3). Providing this mailed notice in conjunction with the mailed notice to others listed in §39.413, and notice by publication provides adequate notice to those who could be affected by major changes at landfills. No changes were made in response to these comments.

Comment

TCE commented that facilities located, or proposed to be located within the city limits or the extraterritorial jurisdiction of a city should be required to publish notice in a newspaper of general circulation within that same city.

Response

The rule requires published notice by cross-reference to Chapter 39 (§§39.501(c), 39.418(b)(1), and 39.405(f)(1) and (2)) consistent with the notice provided for permits. Under §39.405(f)(1), notice is required to be published in a newspaper of general circulation in the municipality where the facility is located, or in the newspaper of largest circulation in the county if the facility is not located in a municipality. In addition, notice is required to be published under §39.405(f)(2), which requires publication in the newspaper of the largest general circulation that is published in the county, or if a newspaper is not published in the county, in a newspaper of general circulation in the county. Providing this published notice in conjunction with the mailed notice and notice posted on signs provides adequate notice to those who could be affected by a registered facility. No changes were made in response to these comments.

Comment

TCE commented that applicants should be required to submit an updated adjacent landowners map when an application is referred to the State Office of Administrative Hearings, so that the affected persons may receive notice of the hearing.

Response

This comment is outside the scope of this rulemaking which includes the procedure for providing notice for registration applications. Registrations are generally not subject to contested case hearings as reflected in §330.57(b), so there is no need to update the landowner list for notice of a hearing. No changes were made in response to these comments.

Comment

TCE commented that the new sign-posting requirement included in proposed §330.69(b) is a positive step forward. This is a simple means by which to notify the public most likely to be impacted by the facility. Similar sign-posting requirements should be included in TCEQ rules for all types of MSW facilities, and not be limited in applicability to registrations as proposed. Additionally, the rules should provide for signs in Spanish when appropriate.

Response

The commission agrees that posting signs at the facility will be a simple, effective way to provide public notice for registrations. The commission agrees that bilingual notices may be appropriate in many circumstances and has added that posted signs shall follow the criteria for alternative language notice in §39.405(h)(2). Requiring posting signs for notice of all types of MSW facilities is beyond the scope of this rulemaking, since public notice requirements for MSW permits are located in Chapter 39.

Comment

The Travis County Commissioners Court requested that the commission define "substantial public interest" as used in §55.154(c)(1) to include requests for a public meeting by a local elected official, a COG, a homeowner's or property owner's association, or by more than six residents or businesses.

Response

The rule requires a public meeting to be held on a registration application consistent with the standard used for permit applications by cross-reference to §55.154(c). The standard reflected in §55.154(c) is consistent with the standard stated in Texas Water Code, §5.554. This standard is reasonable for establishing the amount of public interest to warrant conducting a public meeting. If the commission were to consider developing this standard further, it would be more appropriate to amend the Chapter 55 provision in order to keep the standard consistent for programs subject to §55.154(c). No changes were made in response to these comments.

Comment

Many individuals commented that the commission needs to fix House Bill 1609, which was passed during the 79th Legislative Session, and protect citizens' right to know and participate in public meetings about new and expanding trash facilities in their communities. Others requested that TCEQ be required to hold public meetings for new landfills, hazardous waste sites, or other trash facilities.

Response

The commission is responsible for implementing the laws adopted by the legislature by adopting rules consistent with those laws. As to public meetings, the scope of this rulemaking is limited to public meetings for MSW registrations. When the commission held mandatory public meetings in the past for all new registrations, it found that it was common for there to be little or no public interest when a meeting was convened. The commission wants to avoid devoting a significant amount of resources to preparing for and attending public meetings around the state when there is no significant public interest. The rules include a reasonable standard for deciding when to hold a public meeting for registrations subject to this rule. No changes were made in response to these comments.

Comment

Several commenters requested that property owners near landfills be notified of policy changes and events that potentially impact the environment.

Response

The commission continually strives to keep the public informed of policy developments through the use of mass mailings, stakeholder meetings, and the internet. Persons may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. Persons may request to be added to: 1) the mailing list for a specific application; 2) the permanent mailing list for a specific applicant name and permit number; and/or 3) the permanent mailing list for a specific county. Persons can also use the commission's Web site for What's New in Rules at: *http://home.tnrcc.state.tx.us/internal/legal/rules/internallistserve.html* to obtain information about commission rulemaking projects. No change was made in response to these comments.

Comment

Many commenters stated that the public should have an opportunity for full review of landfill permits when major changes are made.

Response

This comment is outside the scope of this rulemaking, since this rulemaking does not change the level of public participation provided when changes are made to a landfill permit. No changes were made in response to these comments.

§330.71. Duration and Limits of Registrations and Permits.

Comment

The commission solicited comment on whether the duration of permits should continue to be specified in Chapter 330 and in Chapter 305. Several commenters stated that they did not object to duration of authorizations being addressed in both Chapters 330 and 305. Many commenters, including TCE and PIC, stated that waste management authorizations should have term limits like all other pollution permits similar to those authorizations used in 38 other states. HCPHES, CWA and TCE commented that transfer stations and waste processing facilities should have term limits. TCE commented that longer terms could be justified based on landfill permits including more protective provisions. Several commenters, including HCPHES and TCE, stated that landfill permits should be reviewed periodically to ensure compliance with rules and regulations. Several commenters, including RMR, TDS, and TxSWANA, agreed with the proposed language that waste authorizations should normally be issued for the life of the facility. RMR commented that imposing duration limits on permits would threaten a community's ability to sell bonds and thus be detrimental to all communities that are involved in responsible long-range solid waste management and planning.

Response

The commission's MSW program has generally issued authorizations for indefinite periods in conjunction with relying on other regulatory components to protect the public from potential impacts from facilities. Some of the other regulatory components include: requiring commission approval and providing for public participation in considering changes to authorizations; commission authority to initiate authorization changes; compliance monitoring and enforcement; and, conducting five-year compliance reviews under THSC, §361.088(g). The commission's approach has been effective in regulating MSW facilities, and any protections that could be gained by prescribing term limits would not justify the additional demand on the resources of the commission and industry.

Comment

TCE commented that term limits are needed, because the waste acceptance rate at a landfill may change drastically without appropriate corresponding protections being added to the permit. HCPHES commented that the permit application may provide an estimated life of the permit, but that it is simply an estimate and can be misleading.

Response

Section 330.125(h) was amended in 2004 to provide that if the annual waste acceptance rate exceeds the rate estimated in the landfill permit, the owner or operator shall apply to modify the waste acceptance rate and any needed changes in the site operating plan to protect public health and the environment. This provision addresses the concern raised by the commenter by creating a mechanism for the commission, and the public since the modification must be accompanied by public notice, to ensure that provisions are added to permits as necessary. No changes were made in response to these comments.

Comment

WMTX commented that the proposed grounds for registration revocation and denial are not consistent with §305.66 (permit denial, suspension, and revocation); THSC, §361.089 (permit denial); Texas Water Code, §7.302 (permit revocation); or Texas Water Code, §7.303 (registration revocation).

Response

The commission agrees that the provisions related to denial and revocation should be consistent with corresponding statutory and regulatory provisions, and the rule has been revised accordingly. The proposed additions have been removed and the rule has been revised to cross-reference the provisions in Chapter 305 for denial and revocation in order to avoid conflicts and to improve consistency between programs.

§330.73. Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities.

Comment

WMTX commented that the requirement to hold a preconstruction conference should be removed from the regulations. Such conferences are not necessary, nor do they serve any useful purpose, given that the agency has previously reviewed and granted the application to construct the facility. The conference is partic-

ularly unnecessary for vertical expansions where there will be no new excavation.

Response

The commission believes that preconstruction conferences are an appropriate forum to discuss the construction details as well as reporting and operational responsibilities of the owner or operator. The commission has made no changes in response to these comments.

Comment

RMR commented that the language concerning the timing of the preconstructon conference is unclear. The phrase, "within 90 days prior to the beginning of initial excavation," could mean the meeting must be held at least 90 days prior to initiation of construction or within a 90-day time frame prior to construction. RMR recommended that the rule language be revised to require that a preconstruction conference be held prior to the beginning of excavation and that the preconstruction conference shall not be held more than 90 days prior to the date that construction is scheduled to begin.

Response

The commission agrees with the comment and has revised the rule language.

§330.103. Collection and Transportation Requirements.

Comment

HCPHES commented that §330.103(a), related to collection and transportation requirements, does not appear to clearly make the collector-transporter responsible for uncollected waste along a collection route and as such, makes it difficult for investigators to enforce. The proposed subsection states, "Municipal solid waste (MSW) containing putrescibles shall be collected a minimum of once weekly to prevent propagation and attraction of vectors and the creation of public health nuisances. Collection should be made more frequently in circumstances where vector breeding or potential to harbor vectors is significant."

HCPHES expressed the belief that §330.103(a) should clearly state that municipal, contractor, or private route collector-transporters (such as collectors of residential garbage and waste in dumpsters as at apartments complexes and businesses etc.) are responsible for uncollected waste. Generally, when §330.3(25) and THSC, §361.271(a)(3) are read together, this meaning is derived, and TCEQ has agreed to this interpretation. However, it has been a source of confusion and to remove any ambiguity, HCPHES suggested that the following wording for the proposed §330.103(a) would more clearly place responsibility on collector-transporters, in a contractual agreement, prior to collection of putrescible waste: "Collectors of municipal solid waste (MSW) operating collection systems, operating under their own authority or by contract, shall be responsible for ensuring that MSW containing putrescibles are collected a minimum of once weekly to prevent propagation and attraction of vectors and the creation of public health nuisances. Collection must be made more frequently in circumstances where breeding or potential to harbor vectors is significant."

Response

The commission believes that all persons share a responsibility for the proper and efficient collection of MSW, including residents, apartment complex managers, and business property managers, as well as the contracted transporter who collects the waste. The waste generator is legally responsible for making sure its waste is collected in a timely manner. The commission made no change in response to this comment.

Subchapter D: Operational Standards for Municipal Solid Waste Landfill Facilities

Comment

HCPHES stated that the new rules need to be further clarified to better define what must be included in each site operating plan. They suggested that, for clarity and to make the provisions enforceable, definitions should be added for working face, active disposal area, and unloading areas as provided by the TCEQ in the preamble to the 2004 adopted MSW rules (29 TexReg 11054 and 11072) (2004 Revisions). Specifically, the preamble provides: working face includes areas where waste has been deposited for disposal but has not been covered; active disposal area includes all working faces and areas covered with alternative material daily cover; and unloading areas are areas designated for unloading, including all working faces, active disposal area, storage areas, and other processing areas.

Response

The commission agrees that these definitions provided for clarity in the preamble to the 2004 Revisions and should be added. Definitions for working face, active disposal area, and unloading areas are now provided in response to these comments.

§330.121. General.

Comment

HCPHES requested that the sentence from §330.121(b) be deleted which provides that landfill permit applications that were pending December 2, 2004, are subject to the former rules unless an applicant elects to proceed under the amended rules.

Response

This sentence was included in the rules to reflect the decision made by the commission on April 13, 2005, which resolved a certified question for several cases pending at the State Office of Administrative Hearings. While the commission's decision allowed for applications to be considered under the rules in place when the applications were filed, the facilities are still subject to the executive director's call-in schedule to comply with the 2004 Revisions to the site operating rules for landfills. It is reasonable to allow those pending applications to be considered under the former rules, because the applicants relied on the former rules in preparing their applications and should not be subject to additional costs and delays to comply with the amended rules. No changes were made in response to these comments.

Comment

RMR commented that the sentence in §330.121(b) which refers to the "initial application" to modify a site operating plan for a landfill to meet the 2004 Revisions being processed as a modification should be revised. RMR commented that the provision be clarified to reflect that the application to comply with the executive director's schedule to meet the 2004 Revisions be processed as a modification. This change would allow permittees to modify site operating plan provisions before being called-in by the executive director without taking a chance that modification could be considered to be its call-in modification.

Response

The commission agrees with these comments and has revised the rule consistent with the recommendation. Permittees should not be discouraged from modifying their permits before they are called in to upgrade to the 2004 Revisions.

Comment

HCPHES requested that §330.121(c) be changed to require landfill permittees to modify their permits to comply with the 2006 Revisions for site operating plans.

Response

Landfill permittees are not being required to initiate a permit change to comply with the 2006 Revisions for site operating plans, because permittees are already having to conform to the 2004 Revisions and very few changes were made to the site operating plan rules in the 2006 Revisions. The commission and permittees are devoting significant resources to incorporating the 2004 Revisions, and it would be unreasonable to require another round of upgrades to comply with the few site operating plan rules that changed in the 2006 Revisions. The site operating plan rules which changed in the 2006 Revisions will be incorporated into new applications, major amendments, and modifications of those specific provisions. No changes were made in response to these comments.

§330.125. Recordkeeping Requirements.

Comment

NAG requested that a limit be imposed on the amount of waste that can be accepted at a landfill on a daily basis. Since two facilities can operate next to one another, special consideration should be taken as to the amount of waste that is being brought in to these facilities by not only the facility's trucks but from all the transport trucks from far away transfer stations and the multitude of haulers from varying distances.

TCE suggested that the agency should provide for enforceable limits on waste acceptance rates at MSW facilities. The commenter added that facilities should not be permitted to radically change this rate without an additional review to ensure that site operating requirements are adequate to address the new acceptance rates and that this review should be subject to a public hearing to ensure that appropriate attention is given to the change.

Response

The commission agrees with some of these comments and points out that landfill facilities are required to keep records of annual waste acceptance rates. Owners or operators of landfills are required by §330.125(h) to apply for a noticed permit modification request whenever the annual waste acceptance rate exceeds the estimated rate specified in the facility permit. The application must propose any needed changes in the site operating plan to manage the increased waste acceptance rate to protect public health and the environment. The increased waste acceptance rate may justify requiring permit conditions that are different from or absent in the existing permit. The commission believes that a noticed modification is the appropriate level of authorization to provide for public input on an increased waste acceptance rate for a landfill. As to transfer stations, §330.61(b)(1)(B) requires that the waste acceptance plan include the maximum amount of solid waste to be received daily and annually. A transfer station would need a new authorization or a major amendment to increase the authorized amount of waste it could receive. The commission made no changes in response to these comments.

§330.127. Site Operating Plan.

Comment

HCPHES proposed that §330.127 should include, "at a minimum, the Site Operating Plan must include the following:" and proposed adding §330.127(7), "and any other requirement deemed appropriate by the executive director."

Response

The commission believes that the proposed changes would not significantly change the rule as proposed. The rule provides the minimum requirements and does not prevent the inclusion of other components, as needed. Application and modification rules allow for the executive director to request the submittal of additional information required for the processing of an MSW authorization beyond that specified by the rules. No changes were made in response to these comments.

Comment

HCPHES suggested that §330.127(3) should require that the site operating plan include a description of the general and site-specific instructions.

Response

The commission believes that the proposed changes would not significantly change the rule as proposed. The use of "general" in the proposed rule does not remove the need to provide site-specific information. The rule calls for "general instructions that the operating personnel shall follow," which would include all necessary site-specific procedures. No changes were made in response to these comments.

Comment

HCPHES indicated that §330.127(5)(A) requires random inspections but does not provide any further guidance and should include determining the frequency of random inspections based on factors such as volume of waste being accepted, compliance history, and amount of special waste received.

Response

The commission believes that the frequency of random inspections is site-specific and therefore is not mandating the frequency of the random inspections required at MSW facilities. Under a call-in program currently in progress for existing landfill permits and for any new application, site operating plans are reviewed by MSW Permits Section staff, and the adequacy of random inspection frequency is established on a case-by-case basis. The commission made no changes in response to these comments.

§330.129. Fire Protection.

Comment

Allied noted that proposed §330.129 would require sufficient on-site equipment to place a six-inch layer of earthen material to cover any waste not already covered with six inches of earthen material within one hour of detecting a fire, which is neither necessary nor feasible.

Response

The commission recognizes that, in certain instances, one stockpile of earthen material may serve to comply with the requirements for fire protection and for daily cover. At facilities utilizing

alternative material daily cover, this rule could require an earthen material stockpile in addition to alternative material daily cover materials. Requiring facilities to be in a position to smother a fire within one hour is reasonable, and the rules also include a provision for the executive director to approve alternative methods of fire protection. The commission made no change in response to these comments.

Comment

Allied shared that it knows of no instances at landfill facilities within the state where working face fires could not be readily extinguished, usually by separating the area waste containing the fire, typically a single load that created the fire condition, and quickly pushing earthen material onto the burning area to extinguish the fire. The commenter offered that requiring that the entire working face be covered within one hour will likely require that each landfill acquire and maintain two or three times the number of scrapers and bulldozers than are typically needed for normal operations, just to meet this standard.

Response

As fire protection is a serious concern for MSW facilities, the commission is obligated to establish a simple scenario for which landfills must be prepared to respond. The commission has concluded that the reasonable potential exists, regardless of anecdotal evidence to the contrary, for a fire extending throughout the working face of the landfill. The commission believes that one hour to smother this scenario is a reasonable expectation. To date, site operating plan updates in response to the ongoing site operating plan call-in have not shown that it will generally be necessary for facilities to double or triple their equipment to comply with this provision. Please note that the current rule includes a provision for the executive director to approve alternative methods of fire protection. The commission made no change in response to these comments.

§330.133. Unloading of Waste.

Comment

HCPHES and TCE suggested that rules establishing the contents of the site operating plan should include procedures to prevent radioactive materials from entering or being disposed at an MSW facility, including response after detection, training, notification, recordkeeping, and reporting. These commenters suggested a need for definitions of radioactive materials.

Response

Under existing Chapter 336 rules, no person may dispose of radioactive material unless that person has a license from the TCEQ under Chapter 336 or an exemption from the DSHS. Material that has been exempted from licensing requirements by the DSHS is not subject to the TCEQ's licensing requirements for radioactive material disposal under Chapter 336. The DSHS considers exemptions under 25 TAC §289.201(c). Certain materials emitting radiation and exempted by the DSHS may be disposed at an MSW facility as if the material were not radioactive. Under §305.52, an application which involves the disposal of a waste containing radioactive materials must be accompanied by a letter or other instrument from the TCEQ, DSHS, or other appropriate authority stating either that the applicant, or the person delivering the waste containing radioactive materials for disposal by the applicant, has a license from the TCEQ, DSHS, or any other appropriate authority; or that the applicant or person served by the applicant does not need such a license. The rules have been revised in response to these comments by adding new §330.15(e)(9) to include radioactive materials, as defined in Chapter 336, as being prohibited from disposal in MSW facilities except as authorized in Chapter 336 or as subject to an exemption of the DSHS. Section 330.127 requires site operating plans to include procedures to detect and prevent disposal of prohibited wastes. The procedures must include: random inspections of incoming loads; inspection records; training landfill staff to recognize prohibited waste; and remediation provisions. Listing radioactive material as a prohibited waste provides adequate protection posed by the risk of disposing of this material in MSW facilities. A cross-reference has been added to Chapter 336 for the definition of radioactive material in response to comments.

Comment

HCPHES suggested that "unloading area" needs to be defined to clarify the requirements of §330.133(a). The commenter noted that, according to the preamble to the 2004 Revision, "unloading area" is a broad definition that includes working face, but the third sentence in §330.133(b) refers only to the working face staff.

Allied observed that proposed §330.133(b) would require working face staff to have authority and responsibility to reject unauthorized loads, have unauthorized material removed, and assess surcharges and that such duties and responsibilities are inappropriate for working face staff and better reserved for site management personnel.

Response

The commission agrees that applicable staff should have authority and responsibility to reject loads if unauthorized waste is identified. This may include, but may not be limited to, gate staff and personnel performing load inspections. To address these comments, "working face staff" in §330.133(b) is replaced with "staff involved with unloading or inspection of waste." The term "unloading areas" is now defined in the rules in response to these comments.

Comment

HCPHES noted that §330.133(c) clearly states that unloading of prohibited wastes at a facility must not be allowed, but then states that any prohibited waste must be returned immediately or otherwise properly managed by the landfill. The commenter indicated that clear procedures need to be provided in the rules in the event that the generator leaves and the landfill is left with the prohibited waste.

Response

Prohibited wastes may not be unloaded at an MSW facility; however, the commission recognizes that there will be occasions when prohibited waste is not discovered until after it is unloaded, and potentially not until after the delivery vehicle leaves the facility. For this reason, §330.133(c) requires that the site operating plan include procedures for management of prohibited waste in the event that this occurs. These procedures are expected to be site-specific and event-specific, so it is appropriate to leave some level of discretion for facilities to develop site operating plan provisions and to deal with specific incidents. No changes were made in response to these comments.

§330.135. Facility Waste Acceptance and Operating Hours.

Comment

HCPHES indicated that §330.135(a) should specify under what circumstances authorizations will be granted for facilities to operate 24 hours per day.

Response

The commission believes that it needs to retain flexibility to continue authorizing operating hours on a case-by-case basis considering the potential impact on surrounding communities. No changes were made in response to these comments.

Comment

TDS and WMTX indicated that the definition and associated operational limitations of "operating hours" in §330.3(100) and §330.135 present an unworkable limitation on the operators of MSW landfills. WMTX added that conducting construction activities and waste acceptance and disposal activities at the same time crowds the facility with heavy equipment and increases the potential for collisions and injuries and that facilities will have to devote personnel and equipment to construction activities that would otherwise be involved in waste acceptance and disposal activities.

Response

The existing rules for operating hours have not been changed. The rules specify reasonable hours for landfill operations and include authority for the commission to approve operating hours in excess of those stated in the rules. The commission believes that with proper planning, the performance of construction activities and waste acceptance and disposal activities may be accomplished during operating hours. The commission further anticipates that facilities will be staffed and equipped sufficiently to address all activities that are part of landfill operations. The commission is justified in limiting operating hours by the need to protect communities from the potential impacts from landfills. Landfill operations outside the stated hours are more likely to disturb people in residential areas. The commission made no changes in response to these comments.

Comment

TDS noted that, in accordance with §330.135(b) and §330.229(b), operating hours may be extended on up to five occasions per year with the approval of the executive director but it is not clear whether these approvals must be obtained in advance.

Response

The rule indicates that the executive director may approve up to five days for alternative operating hours. This approval must be received before an applicant can use the alternative operating hours. To avoid the need for prior approval for each easily foreseen special occasion, special purpose event, holiday, or other special occurrences each year, these days should be specified in the site operating plan, and approval of the site operating plan acts as approval for the alternative operating hours. The site operating plan should avoid specific dates, but rather refer to the event or occasion, such as "the day after Thanksgiving" or "the day after the Cotton Bowl." The commission made no changes in response to these comments.

Comment

TDS suggested that the change in §330.135(b) from "alternate" operating hours to "alternative" operating hours is a mistake and most likely occurred as a result of implementing a global change to ensure that "alternative liner" replaced "alternate liner" throughout the proposed rules.

Response

"Alternative" and "alternate" are, for some usages, synonymous; however, the majority of definitions for "alternate" include some implication of first one, then the other in succession, as in "meetings are held on alternate Tuesdays." Definitions for "alternative" generally imply a choice different from the usual or conventional. The commission believes that "alternative" is the preferable choice and no changes were made in response to these comments.

Comment

TDS and WMTX noted in §330.135(c) that regional office staff may allow alternative operating hours to address disasters, emergency situations, or other unforeseen circumstances that could result in disruption of solid waste services in the area but that regional office staff may not always be available to authorize the use of heavy equipment to deal with emergencies such as fire, flooding, and berm breach.

Response

The commission notes that during Hurricane Rita the existing system was in place and adequately addressed the issues faced. With respect to emergencies at MSW facilities, the commission wishes to clearly state that emergency response takes precedence over operating hours. Should an emergency situation occur, heavy equipment may be employed to reduce the potential effects to human health and the environment. Emergencies include, but are not limited to, fire, flood, breach, and release of contaminated water or other material. Activities that are part of ongoing operations, including, but not limited to, application of cover, cell construction, and soil stockpiling, do not qualify as emergencies and, where heavy machinery is required, are not allowed outside of operating hours. Regional staff should be contacted for ongoing situations, such as extended periods of inclement weather, that create conditions that may require receipt of waste outside of waste acceptance hours or the operation of heavy equipment outside of operating hours, where failure to do so could result in the disruption of waste management services in the area. The commission feels that landfill personnel should be capable of identifying these situations during normal business hours. No changes were made in response to these comments.

§330.141. Easements and Buffer Zones.

Comment

WMTX commented that there are inconsistencies in the provisions regarding buffer zones in: §330.3(19), which provides that a buffer zone is adjacent to the facility boundary and so may be located inside or outside the boundary of the facility; §330.141(b), which states that the buffer must be maintained between solid waste processing and disposal activities and the boundary of the facility as determined by §330.543; and §330.543(b)(2), which requires that the buffer zone be on property owned or controlled by the landfill owner or operator. WMTX suggested that these definitions should be harmonized to clarify whether buffer zones must fall within the facility boundary.

Response

The commission agrees that these rules are not sufficiently consistent to avoid potential misinterpretations. The commission intends for buffer zones to fall within and adjacent to the facility boundary on property owned or controlled by the owner or op-

erator. Sections 330.3(19), 330.141(b), and 330.543(b)(2) are now amended to include this clarification.

§330.149. Odor Management Plan.

Comment

HCPHES suggested that the requirement for an odor management plan in §330.149 should be strengthened.

Response

The commission believes that odor management plans need to be site-specific and has written the rule to allow flexibility for addressing site-specific and waste-specific issues in the site operating plan. The commission made no changes in response to these comments.

§330.165. Landfill Cover.

Comment

HCPHES commented that, to control disease vectors, fires, odors, windblown litter or waste, and scavenging, §330.165 should be revised to require facilities operating 24 hours per day to apply daily cover at an "artificially set time," such as between 9:00 p.m. and midnight, and to clarify that the executive director may require placement of daily cover more often than once per day at 24-hour facilities. The commenter added that the discretion given to the executive director to require more frequent application of daily cover should also apply to local pollution control agencies.

Response

The commission adopts §330.165 to require landfills that operate on a 24-hour basis to cover the working face or active disposal area at least once every 24 hours. The commission has not increased the minimum frequency of daily cover application or designated times during which daily cover should be applied at 24-hour per day facilities. Any benefit to be gained by specifying exact times for applying cover are outweighed by an operator's need for flexibility. The rule is intended to authorize the commission or the executive director to require that cover be applied more frequently at any type of landfill. With respect to discretion granted to local pollution control agencies, counties may elect, through §330.25, to exercise licensing authority over MSW facilities. The commission made no changes in response to these comments.

Comment

WMTX noted that §330.165(c), regarding intermediate cover, specifies that runoff from areas that have intact intermediate cover is not considered as having come into contact with the working face or leachate but that there is no such statement in the provisions governing daily cover and alternative daily cover in §330.165(a) and §330.165(d), respectively. The commenter asked if this indicates that runoff from areas with daily or alternative daily cover is contaminated water.

Response

The commission agrees that the current rules are not clear regarding runoff from areas having intact daily, weekly, or alternative daily cover. To correct this, the commission has revised §330.165(a) and (b) to state that runoff from areas that have intact daily cover or intact weekly cover is not considered as having come into contact with the working face or leachate. The commission has also revised §330.165(d) to state that the executive director may require the owner or operator to test runoff from areas having alternative daily cover for compliance with Texas Pollutant Discharge Elimination System discharge limits or have the owner or operator manage the runoff as contaminated water.

Comment

The City of Port Arthur, the City of Beaumont, and Newpark commented that §330.165(d) should be revised to remove the limit of 1,500 parts per million of TPH concentration in alternative daily cover. The commenters recommended revising the proposed rule to allow variance to the restriction.

Response

The commission has revised the rule to allow the owner or operator to demonstrate for executive director approval whether material exceeding 1,500 mg/kg TPH can be a suitable alternative daily cover. The commission requires that the demonstration include information regarding the risk to human health and the environment and the information required in §330.165(d)(1) regarding a chemical analysis and characterization of the material and performance of the material to act as an effective cover. If approved, the revised rule allows the executive director to impose additional permit requirements, as appropriate, regarding the use of this material.

Comment

WMTX commented that the proposed requirements in §330.165(g) do not allow for a permissible amount of erosion, and therefore are subject to inconsistent enforcement. WMTX has provided suggested language changes.

Response

This rule was not proposed to be changed from the existing rule. Waste that is exposed and visible is definitely a threshold that triggers the need for repair work and subsequent recordkeeping. Other lesser signs of erosion will have to be determined on a case-by-case basis. The commission has published a "Guide for Preparing Site Operating Plans for Municipal Solid Waste Facilities," which contains guidance about repair of cover erosion. The guide can be used by facilities as well as enforcement staff. No changes were made in response to these comments.

§330.171. Disposal of Special Wastes.

Comment

Several commenters expressed concern that the segregation and disposal of treated medical waste identified as a special waste in proposed §330.171(c)(2) will be unnecessarily burdensome and costly to healthcare facilities. APIC and THA stated that the term "special characteristics or properties" is vague, making compliance or enforcement impossible. APIC, DRMC, and THA stated that there is no scientific evidence that treated medical waste poses a greater risk than routine MSW, and requested that language which identifies treated medical waste with special characteristics or properties as a special waste be removed. APIC and THA suggested that if retained, the rule be revised to provide for a "treatment certification statement" that would provide notice when treated medical waste with special characteristics or properties is delivered to the landfill. MedShred proposed that the rule be reworded for clarification. PIWS suggested that the rule be revised to remove the requirement for a shipping document.

Response

The commission believes that treated whole, unencapsulated hypodermic needles and syringes are a concern for landfill work-

ers who may be unaware of a waste shipment's contents. Additionally, treated medical waste that is still in intact red bag packaging may cause unnecessary alarm and concern when accidently spilled or viewed from a distance. The commission believes that special handling of those waste streams is necessary, but acknowledges that categorizing those treated medical wastes as special wastes may unnecessarily increase the cost of disposal. The commission has deleted mention of treated medical waste from within the definition of special waste in response to these comments. The commission amends the proposal to provide that treated medical waste may be managed as routine MSW with the condition that whole, nonencapsulated hypodermic needles or syringes or intact red bags that are sent to a landfill for disposal must be accompanied by a shipping document.

§330.175. Visual Screening of Deposited Waste.

Comment

WMTX insisted that visual screening requirements of §330.175 (Visual Screening of Deposited Waste), §330.239 (Noise Pollution and Visual Screening), and §330.543(b)(3) (Buffer Zones Alternatives) are contrary to the well-settled Texas common law and that requirements addressing visual screening should be deleted (see *Harrison v. Langlinais*, 312 S.W.2d 286, 288 (Tex. Civ. App.-San Antonio 1958, *no writ*); *Klein v. Gehrung*, 25 Tex. 232 (1860); *Boys Town v. Garrett*, 283 S.W.2d 416, 422 (Tex. Civ. App.-Waco 1955, *no writ*); and *Shamburger v. Sheurrer*, 198 S.W. 1069, 1071 (Tex. Civ. App.-Fort Worth 1917, *no writ*)).

Response

The commission notes that the cited decisions appear to deny the rights of a landowner to claim losses over a view to or from land and to indicate that lawful use of property is not prohibited because of aesthetic concerns of adjoining or nearby landowners. The decisions do not prohibit the commission from requiring visual screening at facilities the commission regulates. Visual screening requirements are intended to reduce impacts on adjacent and nearby landowners and to make MSW facilities more compatible with surrounding land use. The commission made no changes in response to these comments.

§330.177. Leachate and Gas Condensate Recirculation.

Comment

HCPHES and TDS noted that §330.177 will allow a Type I landfill with an alternative liner design and a leachate collection system to recirculate leachate and landfill gas condensate, apparently in violation of 40 CFR §258.28(a)(2), which prohibits recirculation of leachate over alternative liners and requires that recirculated leachate and landfill gas condensate be returned to the cell from which it was generated. The commenters indicated that it is not clear under what circumstances the executive director will approve of leachate and landfill gas condensate recirculation over an alternative liner. TDS also noted that by changing the article from "the" to "a," TCEQ has validated the much used and abused practice of transferring leachate and landfill gas condensate from one landfill unit to another landfill unit, again in apparent violation of 40 CFR §258.28(a)(2).

Response

The commission agrees with some of these comments related to compliance with federal requirements and has revised §330.177 to remove leachate recirculation over an alternative liner.

Subchapter E: Operational Standards for Municipal Solid Waste Storage and Processing Units

Comment

WMTX requested that TCEQ explicitly state which requirements of Subchapter E are applicable to transfer stations.

Response

All of Subchapter E is potentially applicable to MSW transfer stations, dependent on site-specific conditions and processes. No changes were made in response to these comments.

§330.201. Applicability.

Comment

RMR commented that the provision requiring modification requests to be filed within 180 days to upgrade site operating plans for storage and processing units should be changed to allow the executive director to set a phased-in implementation schedule.

Response

A specific deadline was set for these applications, because of the need to have the changes incorporated in a timely manner. The permitting staff's experience processing applications to upgrade landfill site operating plans will enable them to process the non-landfill site operating plans in a timely manner. The commission avoided using the type of schedule used for landfills, because the program can now better estimate the amount of time needed to process applications and the commission prefers to set a specific implementation date when possible to avoid finality issues. As to the rule providing inadequate time to prepare and submit an application, the rule allows a reasonable length of time and it also allows the executive director to extend the deadline upon request. No changes were made in response to these comments.

Comment

Allied requested that §330.201(a) be revised to reflect that Subchapter E does not apply to site operating plans for storage and processing activities conducted at a landfill, because such activities should be governed by Subchapter D.

Response

The commission disagrees with these comments, because some storage and processing activities will be conducted at a facility also having a landfill, and these activities should be subject to Subchapter E. When a separate authorization is required to conduct storage or processing activities at a permitted landfill facility, Subchapter E is intended to apply to those activities. Section 330.201(a) has been revised in response to comments to provide that if separate authorizations are requested for storage and processing activities to be authorized at a landfill, the commission may reconcile any applicable conflicting site operating plan provisions between Subchapters D and E.

§330.203. Waste Acceptance and Analysis.

Comment

Allied indicated that Subchapter E would impose requirements beyond those required by Subchapter D that are inappropriate or unnecessary for disposal facilities. For example, the commenter noted, Subchapter E specifies waste acceptance and analytical requirements which would be inappropriate if applied to landfills, because parameters such as biological oxygen demand and total suspended solids, specified in proposed §330.203, have no impact on waste characterization. The commenter added that requiring this additional analytical data would only increase disposal costs for liquid haulers, which would in turn be passed on

to the general public with no additional environmental benefits or controls and that waste analysis requirements for disposal facilities are adequately addressed by proposed (see proposed §330.171 and §330.173) and existing requirements to prepare special waste and Class 1 waste acceptance plans.

Response

The commission agrees that the listed parameters are not appropriate to all waste streams; however, in accordance with §330.203, the owner or operator must specify parameter limitations of each type of waste to be managed by the facility, including, but not limited to, the listed analytes (pH, fats, oil and grease, total suspended solids, chemical oxygen demand, biological oxygen demand, organic and/or metal constituent concentrations, and water content) "if a waste constituent or characteristic could be a limiting parameter that may impact or influence the design and operation of the facility." These parameters are not required unless appropriate to a specific waste. If analysis of a specific parameter is not needed as part of facility design or operation, it is not required under this rule. The commission has made no change in response to these comments.

§330.205. Facility-Generated Wastes.

Comment

WMTX questioned the use of the phrase "emanating from" in §330.205(a). The commenter asked if transfer stations are required to specify characteristics and constituent concentrations of the MSW that they are permitted or registered to accept.

Response

As indicated by the §330.205 title, this rule applies to facility-generated waste. This does not apply to waste processed through a transfer station, as this waste is not generated by the transfer station. The commission agrees, however, that the use of "emanating" allows for easy misinterpretation. "Emanating from" is replaced with "generated by."

Comment

WMTX offered that the second sentence in §330.205(a) is unnecessary in light of §330.205(b).

Response

The commission has established §330.205(a) and (b) to have slightly different requirements to detail specific directives. Section 330.205(a) requires documentation that facility-generated waste leaving the facility can be managed appropriately, while subsection (b) requires that facility-generated wastes must be processed or disposed at an authorized solid waste management facility. No change is provided in response to these comments.

§330.207. Contaminated Water Management.

Comment

WMTX commented that the provisions of the facility's Texas Pollutant Discharge Elimination System authorization should control and suffice. There is no need to duplicate effluent requirements or add redundant requirements in proposed §330.207(g). If the facility's Texas Pollutant Discharge Elimination System permit specifies effluent limits for oil and grease concentrations, the facility should comply with those limitations. If the Texas Pollutant Discharge Elimination System permit does not specify such limits, then it is fair to assume that TCEQ's Wastewater Permitting Section determined that such limits were either unnecessary or inapplicable to the facility. For those reasons, WMTX recommended that this proposed section be deleted in its entirety.

WMTX further commented that additionally, even if this section is retained in the regulations, it should not apply to MSW transfer stations. Such facilities do not process grease trap waste or other wastes containing significant quantities of oil and/or grease.

Response

The requirements of §330.207(g) apply to facilities with an effluent entering a public sewer system. Transfer stations generate contaminated water, both from the waste and from washing down the walls and floor of the unit. Since these facilities generally do not have a separate Texas Pollutant Discharge Elimination System authorization, the commission made no changes in response to these comments.

§330.213. Citizen's Collection Stations.

Comment

TCE commented that language which exempts sharps disposed at citizen's collection stations from being designated medical waste should be deleted from the rule.

Response

The commission believes that the use of citizen's collection stations as drop-off points will encourage responsible handling and disposal of sharps by individuals and has not revised the rule in response to these comments. Designating these sharps as medical waste would be a disincentive for collection stations to accept and manage sharps.

§330.219. Recordkeeping and Reporting Requirements.

Comment

Allied noted that §330.125 requires that information in the site operating record be made available to the executive director for inspection while the counterpart requirement in §330.219 qualifies this obligation by requiring that such information be made available at all reasonable times, thereby creating inconsistent regulations for landfill facilities with storage and processing units.

Response

The commission sees no important distinction between the two rules and anticipates that the information required by these rules will be provided to the executive director whenever it is requested. The commission has made no change in response to these comments.

Comment

APIC and THA commented that the rule should define and require a "treatment certification statement" attesting to medical waste treatment, that would be provided by the treatment facility to the generator, transporter, and the receiving landfill. As an alternative, THA also suggested a "generator certification statement" to be signed by the generator.

Response

The commission agrees that a certification that medical waste has been treated by a DSHS-approved method is appropriate and, rather than create a definition, has revised documentation required in §§330.219(h), 330.1219(e), and 330.1221(f) to reflect this requirement.

§330.223. Access Control.

Comment

Allied noted that §330.131 states that the preferred access control at landfills is fences and gates while §330.223 requires the use of a four-foot barbed wire or six-foot chain link perimeter fence, thereby creating inconsistent regulations for landfill facilities with storage and processing units.

Response

The commission believes that requirements for access control at different types of facilities are warranted. An MSW landfill with storage and processing units must generally choose one of the prescribed barrier methods for the perimeter of the storage and processing portion of the facility and may propose a method of access control for the remainder of the property. Section 330.201(a) has also been revised, in response to comments, to provide that if separate authorizations are requested for storage and processing activities to be authorized at a landfill, the commission may reconcile any applicable conflicting site operating plan provisions between Subchapters D and E.

§330.225. Unloading of Waste.

Comment

Allied noted that §330.133 requires the "immediate" removal of waste from unauthorized areas and its "immediate" return to the generator or transporter, while §330.225 requires "prompt" removal of waste in an unauthorized area and its "prompt" return to the generator or transporter, thereby creating inconsistent regulations for landfill facilities with storage and processing units.

Response

The commission agrees the similar requirements should be consistent and has changed "prompt" to "immediate" in §330.225.

§330.233. Control of Windblown Material and Litter.

Comment

RMR proposed that §330.233(a) should be clarified to indicate that the collection of windblown material is only required to occur on days that the facility is in operation. This clarification would match language for pickup of trash along the route to the facility in proposed §330.235.

Response

The commission agrees with these comments and expects facilities to provide collection of windblown material only on days that the facility is operating. The commission has revised the rule to add "on days that the facility is in operation" to §330.233(a).

§330.235. Materials Along the Route to the Facility.

Comment

Allied noted that §330.145 requires daily cleanup of rights-of-way of public access roads within two miles of the facility while §330.235 restricts cleanup to primary access roads, thereby creating inconsistent regulations for landfill facilities with storage and/or processing units.

Response

The commission agrees the similar requirements should be consistent and has deleted "primary" from §330.235.

§330.245. Ventilation and Air Pollution Control.

Comment

Allied commented that THSC, §382.004, entitled "Construction While Permit Application Pending," became effective on September 1, 2005. It provides authority to begin construction in specified instances prior to the time an air emissions authorization is obtained. Allied recommended that the additional flexibility provided by that statutory provision be referenced in §330.245.

Response

The commission agrees with these comments and has revised §330.245(b) accordingly.

Comment

Allied indicated that proposed §330.245 specifies odor control requirements that are at variance with those in Subchapter D, including a requirement to comply with the approved state implementation plan. The commenter indicated that the state implementation plan requirement was removed as a landfill operational standard in a recent prior rulemaking.

Response

The commission agrees and has deleted proposed §330.245(k) and relettered proposed §330.245(l) as new §330.245(k).

§330.247. Health and Safety.

Comment

Allied noted that proposed §330.247 requires the facility to comply with applicable federal, state, or local worker health and safety requirements and is beyond the scope of the commission's solid waste program.

Response

The commission agrees. The first sentence of §330.247 is deleted and the rule is revised to include, "Facility personnel will be trained in appropriate sections of the facility health and safety plan."

Subchapter F: Analytical Quality Assurance and Quality Control

Comment

Allied stated that the proposed Subchapter F establishes QA and QC requirements for owners and operators submitting analytical data to the commission. These proposed requirements are unnecessary and imprudent because the commission has an existing program in place under the Texas Water Code to assure that analytical data submitted to the agency meets appropriate QA and QC. The commission may accept environmental testing laboratory data only if the data and analysis is prepared by an environmental testing laboratory accredited by the commission or meeting statutorily-specified standards (Texas Water Code, §5.127 (West 2004)). The commission's accreditation program becomes effective three years after the date notice is published in the *Texas Register* that its laboratory accreditation program has met National Environmental Laboratory Accreditation Conference (NELAC) standards (30 TAC §25.1). The commission's own accreditation program is underway and in less than three years, all data must be submitted by accredited laboratories. In the meantime, laboratory data must be submitted by laboratories meeting specified statutory standards, as well as meeting QA and QC requirements required to be specified in the groundwater sampling and analysis plan.

Allied further commented that this statutory scheme, which requires data to be submitted by a commission-certified laboratory or a laboratory meeting statutory criteria, is the best approach to

regulate QC and QA because it appropriately places obligations directly on laboratories to meet minimum criteria. Proposed Subchapter F, on the other hand, imposes requirements on owners and operators to ensure laboratory compliance with QA and QC. By requiring owners and operators to take on this responsibility, the proposed rule not only imposes an unreasonable regulatory scheme but conflicts with the statutory program providing for accreditation and defining acceptable laboratories.

Response

The commission does not agree with these comments. The commission has developed the Subchapter F requirements for owners and operators submitting analytical data to the commission to aid and ease compliance with the upcoming NELAC requirements to be implemented within the next three years.

Until NELAC standards are adopted, the Subchapter F requirements establish QA and QC measures to be used by owners or operators while selecting analytical laboratories to process their facility samples. A provision was added to §330.261(a) in response to comments for Subchapter F to expire January 1, 2009. This will allow the commission time to review the rule and determine whether to continue it as adopted in coordination with the pending implementation of the NELAC.

Subchapter F will require owners or operators to ensure laboratory compliance with QA and QC measures by shifting the responsibility of the data quality on to owners and operators. Owners and operators do have authority over the analytical laboratories, as the Subchapter F requirements can be pre-established under contract prior to analyses and easily verified against most existing laboratory standard operating procedures manuals.

The Texas Water Code, §5.127 requirements do not cover sample collection and preservation activities or their review to ensure compliance with the standards. Some of the goals of the proposed Subchapter F QA and QC program also include the establishment of appropriate field and laboratory sampling and analysis procedures for all tested analytes. The correct sample collection and sample preparation of representative samples can be accomplished through contractual requirements with the sample collection service provider and the analytical laboratory hired to process the analyses.

Subchapter F also requires the owner or operator to evaluate the QC results supplied to the executive director to ensure compliance with program- or permit-specific data quality standards and discuss the analytical quality of each specific data set.

Verification of the level of quality within data sets submitted to the commission will be commensurate with the decisions to be made. No changes were made concerning these comments.

330.261. Applicability and Purpose.

Comment

RMR commented that this provision should not supersede QA and QC provisions in existing authorizations, and the executive director should be allowed to set a call-in schedule for modifications. TDS commented that it will be difficult to comply with these new requirements within 120 days.

Response

The commission agrees with some of these comments and has revised the rule to allow owners and operators to continue operating under existing authorizations while an application to modify is pending. The rule has been revised to require that an application to modify be filed within 180 days. This change in implementation avoids having conflicting permit provisions that have been superseded by rule, and it extends the time allowed before facilities have to operate under the amended rules. Extending the 120-day deadline to 180 days simplifies the implementation schedule by making this time frame consistent with the time frame for incorporating surface water drainage provisions.

Comment

WMTX commented that the amended data quality requirements should not apply to closed facilities.

Response

The commission has the same need to have quality data from a closed facility as it does from an operating facility in order to protect public health and the environment. No changes were made in response to these comments.

Comment

Allied commented that the proposed subchapter does not reflect appropriate standards. In proposing QA and QC standards, the commission does not adopt all of the NELAC requirements but implements its own. The proposed rule mandates the use of SW-846 unless other methods are approved by the executive director (see proposed §330.285(b)). But EPA has recently acknowledged SW-846's limitations and allowed flexibility in test methods by removing requirements in many of its programs to use SW-846. Thus, in prescribing the use of SW-846 or other executive director-approved methods, the proposed rule actually takes a step backward. For all of these reasons, the commission should delete proposed Subchapter F from the adopted chapter.

Response

The commission does not agree with most of these comments. The commission has revised §330.285(b) to allow for the use of other methods accepted by the executive director.

Subchapter G: Surface Water Drainage

§330.301. Applicability.

Comment

RMR commented that the provision requiring modification applications to by filed within 180 days to conform to the amended surface water drainage requirements should be changed to allow the executive director to set a phased-in implementation schedule allowing more time.

Response

The commission decided to set a specific deadline for the applications, because of the need to have the changes incorporated in a timely manner. The commission avoided using the type of schedule created for upgrading landfill site operating plans, because the commission prefers to set a specific implementation date to avoid finality issues. As to the rule providing inadequate time to prepare and submit an application, the commission believes that 180 days is adequate time to apply for this type of a modification. No changes were made in response to these comments.

§330.303. Surface Water Drainage for Municipal Solid Waste Facilities.

Comment

Allied commented that the title of proposed §330.303 should be revised to "Surface Water Drainage for Municipal Solid Waste

Processing Facilities," to clarify that landfill drainage will be regulated under proposed §330.305.

Response

The requirements of §330.303 apply to all MSW facilities, including landfills. The requirements of §330.305 are additional requirements that apply to MSW landfills. The commission has revised the section title of §330.305 to "Additional Surface Water Drainage Requirements for Landfills."

§330.305. Additional Surface Water Drainage Requirements for Landfills.

Comment

Allied stated that proposed §330.305(d) would require facility design to "provide effective erosional stability to top dome surfaces and embankment side slopes during all phases of facility operation, closure, and post closure care." Allied stated that it is appropriate that a demonstration of the erosional stability of the landfill cap and the landfill side slopes be included. However, this demonstration should not include a requirement for all embankment slopes, such as internal embankments, for all phases of landfill development. In addition, Allied stated that erosion control at an operating landfill site is accomplished in two distinct phases. The first phase is during waste filling operations. During this phase, erosion control is accomplished by minimizing the disturbed areas of the landfill, periodically establishing erosion limiting vegetation, designing and constructing landfill side slopes and storm water diversion structures to minimize storm water flow velocities, collecting suspended solids in silt traps and basins, and ongoing maintenance on disturbed areas to replace soil lost due to erosion. After construction of the final cover at a landfill, the erosion control measures shift to proper design and construction of the landfill cover to minimize long-term soil loss and periodic inspection and maintenance of the constructed final landfill cover. Allied expressed the belief that this approach has been effective in maintaining the protective cover in operating landfills and minimizing long-term soil loss at closed landfills. In addition, excessive soil loss through storm water erosion at landfills would be evident in the suspended solids levels of the storm water discharges from the site. Nearly all, if not all, currently operating landfills have permitted storm water discharge outfalls with total suspended solids limits. Compliance with the discharge limits for suspended solids results in a performance-based standard that promotes site-specific, efficient implementation of erosion control procedures and facilities. This approach should be encouraged by continued reliance on these practices.

Response

The commission agrees that there are many design and operational considerations that contribute to effective erosion control. The commission has revised the subsection to refer to "landfill" and not "facility," and to apply the erosion control requirements to all top dome surfaces and external embankments of the landfill during all phases of facility operation, closure, and post-closure care.

Comment

WMTX commented that the terms "effective erosional stability" and "non-erodible" are not clear in §330.305(d) and (e).

Response

The commission disagrees with the comment. The terms in §330.305(d) and (e) are terms commonly used within the practice of surface water drainage design. The commission has published "Guidelines for Preparing a Surface Water Drainage Plan for a Municipal Solid Waste Facility," which contains information and guidance about these subjects. No changes were made in response to these comments.

§330.307. Flood Protection for Landfills.

Comment

WMTX commented that a facility or applicant should be permitted to demonstrate that a freeboard of less than three feet will sufficiently protect the facility from a 100-year frequency flood and will prevent washout of solid waste from the facility.

Response

The commission believes that the three-foot freeboard requirement provides for an appropriate factor of safety. FEMA's policy requires that levees be structurally sound, properly maintained, and have at least three feet of freeboard above the 100-year flood profile elevations before FEMA will recognize that the levees provide protection. The commission made no change in response to these comments.

Subchapter H: Liner System Design and Operation

§330.331. Design Criteria.

Comment

TCE, NAG, HCPHES, and many individuals requested that the commission not allow vertical expansions over old, unlined "grandfathered" landfills.

Allied stated that proposed §330.331 would require vertical expansions not meeting the subchapter's design criteria to have a composite or alternative liner system. While Allied commented that it agrees that such expansions must protect human health and the environment, the proposed rule's approach is too restrictive and does not allow important flexibility in developing engineering solutions to the design of vertical expansions over older landfills and it also fails to take into account site-specific conditions that could obviate the need for a second liner. Accordingly, Allied recommended an approach which focuses on the key element of minimizing water infiltration into the landfill.

TxSWANA commented that §330.331(a) of the proposed rule requires that vertical expansions over areas that do not have a RCRA, Subtitle D compliant liner must incorporate a composite liner or make some type of demonstration. TxSWANA stated that it is not clear what type of demonstration would be required. TxSWANA noted that constructing a composite liner over existing waste is an engineering feat not generally thought prudent due to the potential for differential settlement of waste to result in a breach of the liner and difficulty in maintaining drainage contours. TxSWANA commented that it does not think that many facilities would seek to comply with the option offered in §330.331(a)(2). That means that an applicant to expand an existing landfill over pre-RCRA, Subtitle D waste would have to construct in accordance with a design that ensures that the concentration values listed in Table 1 of §330.331(a)(1) will not be exceeded in the uppermost aquifer at the point of compliance. TxSWANA commented that it is not sure how that could be proven and needs further guidance as to what it would take to meet that standard. If the intent is to prevent any expansions over pre-RCRA, Subtitle D waste, as appears would be the result, then TxSWANA would appreciate the staff further reviewing the effect that action would have on the industry and the environment. TxSWANA expressed the belief that much

of the long-term solid waste planning in the state depends on the ability to expand existing facilities, many of which are pre-RCRA, Subtitle D facilities. TxSWANA cautioned the TCEQ from taking any step that might interfere with existing long-term solid waste planning or the adequacy of future disposal capacity without further study.

Response

The commission does not believe that unilaterally prohibiting vertical expansions is warranted; however, new §330.331 requires that vertical expansions of Type I landfills over landfills that do not have a composite liner or that have not demonstrated that hazardous constituents will not exceed maximum contaminant limits at the point of compliance must be constructed with a composite liner or demonstrate that hazardous constituents will not exceed maximum contaminant limits at the point of compliance. The allowed demonstration rightly places the focus on constituents exiting the landfill and contaminating groundwater at the point of compliance. The commission made no changes in response to these comments.

Comment

TCE commented that TCEQ needs to require double liners to address the long-term problems that today's Subtitle D landfills will have in meeting current Subtitle D regulatory requirements of protecting groundwater from landfill leachate. TCE further stated that double liner systems with the ability to detect leachate that has permeated the upper liner prior to that leachate escaping through the second liner, should be required. TCE commented that the TCEQ should require double liners within the area of a groundwater district if that district passes a resolution asking that the TCEQ impose this requirement, as this would place the decision on the need to protect groundwater in the hands of those with expertise in a particular aquifer system. TCE further commented that the TCEQ should require double liners in all areas of the state receiving over an average of 25 inches of annual rainfall, in recognition of the special need for leachate control in these areas. Finally, TCE commented that there can be increased initial costs associated with double liner systems, although the decreased quantity of clay needed offsets much of the additional startup costs, and over the long term, double liners will often save money by reducing the need for the expenditure of funds in groundwater cleanup costs.

Response

An affected groundwater district or persons may comment or request a hearing regarding the adequacy of groundwater protection in a permit application if they deem that a double liner system is needed for groundwater protection. An alternative liner design could include a double liner system as proposed by TCE. The commission has adopted rules requiring a composite liner design or an alternative liner design consistent with federal regulations. The commission believes that the liners required by the rules provide a reasonable level of protection. The commission has made no changes in response to these comments.

Comment

TDS commented that the TCEQ needs to give recognition in §330.331(d)(1) that Type IV landfills may be sited in bedrock rather than a true soil that has been derived from weathering of bed rock or transported to the site, and the in-situ material at the base of the landfill between the waste and groundwater may not meet all of the physical properties for a constructed liner without it being ground up and reconstituted into a soil-like material. TDS cited as an example the unweathered Austin Chalk.

Response

The commission believes that for any in-situ rock to be considered as an in-situ liner, it must meet all the physical properties for a constructed liner with no exceptions per §330.339(c)(5)(E). Although an in-situ rock may meet the permeability requirement in some samples, it may also exhibit primary or secondary physical features that would make it unsuitable to be considered as an in-situ liner. Therefore, it is also important that any in-situ rock also meet the Atterberg limits requirements for liquid limit equal to or greater than 30 and plasticity index equal to or greater than 15. Accordingly, the commission disagrees with the comment and has made no change in response to these comments.

Subchapter I: Landfill Gas Management

§330.371. Landfill Gas Management.

Comment

RMR commented that the provision superseding landfill gas management provisions contained in existing authorizations should be deleted or changed to allow the executive director to set a phased-in implementation schedule allowing more time to modify the authorization.

Response

This rule revision is intended to clarify how methane concentrations are measured under the existing and amended rules. The commission expects that most facilities already comply with this methodology and those that do not are not likely to have an express permit provision that would need to be changed to implement the correct methodology. No changes were made in response to these comments.

Subchapter J: Groundwater Monitoring and Corrective Action

§330.401. Applicability.

Comment

Several commenters, including RMR and TDS, commented that the provision in §330.401(a) which provides that the amended groundwater monitoring provisions, other than well spacing, supersede inconsistent provisions should be deleted or revised to require a change to the authorization.

Response

The commission agrees that the requirement to not filter groundwater samples should be implemented by a modification and §330.401 has been revised accordingly.

Comment

WMTX commented that it is not possible to comply with the amended groundwater monitoring requirements within 120 days, because more time is needed to reestablish background values. The monitoring requirements should be implemented within two years in conjunction with the well spacing requirements.

Response

The commission acknowledges that those owners or operators that were filtering groundwater samples will need time to reestablish representative background concentrations of 40 CFR Part 258 Appendix I hazardous constituents from samples that are unaffected by waste management activities. The rule has been revised to allow owners or operators to continue

to sample and analyze groundwater in accordance with their approved groundwater sampling and analysis plan while also collecting and analyzing unfiltered groundwater samples to reestablish background groundwater constituent concentrations based on unfiltered samples. Owners or operators may continue to compare the results of filtered groundwater samples to currently established background concentrations while compiling unfiltered groundwater sample data. The commission anticipates that owners or operators may need to collect unfiltered groundwater samples for up to two years in order to reestablish background constituent concentrations. Owners or operators must apply to modify their permits to rely on unfiltered groundwater monitoring data within two years of the effective date of the 2006 Revisions. Owners and operators may request to revise the list of groundwater monitoring constituents to be more representative of a release of hazardous constituents to groundwater.

Comment

Commenters, including RMR and WMTX, opposed the requirement that facilities must apply to modify their permits to comply with the amended well spacing requirements since no technical justification has been provided for the stricter requirement.

Response

The maximum well spacing interval required under the amended rules is necessary to provide a reasonable monitoring network to detect leaks from a landfill. Permittees may elect to plug or remove some upgradient wells to offset installing additional downgradient or point of compliance wells. The commission believes a staff review is appropriate when determining the number and location of wells in a well system. No changes were made in response to these comments.

Comment

RMR and Allied opposed the requirement that closed facilities must apply to modify their permits to comply with the amended well spacing requirements if a statistically significant change or release is detected. Allied also commented that the rule should not apply to those facilities that stopped receiving waste prior to October 9, 1993, which are not required to monitor groundwater.

Response

The commission has deleted the proposal for the new groundwater monitoring well spacing requirements to apply to closed landfills in response to comments. The commission has adequate authority, without this provision, under existing rules that provide for detection monitoring, assessment monitoring, and corrective action to address groundwater contamination from closed landfills.

Comment

WMTX commented that the trigger for a closed facility to be subject to the well spacing requirements should be when a corrective action program is required instead of when a statistically significant change from background occurs.

Response

The commission has removed the 300-foot well spacing requirement for closed MSW landfills but may determine on a case-by-case basis that additional wells may be appropriate for a closed MSW landfill that detects a statistically significant increase in monitored constituent concentrations.

Comment

Representative Fischer commented that groundwater associated with pre-Subtitle D landfills should be monitored.

Response

Those pre-Subtitle D facilities that continued to operate after the effective date of RCRA, Subtitle D were required to install groundwater monitoring systems and perform groundwater sampling. Post-RCRA, Subtitle D facilities with pre-RCRA, Subtitle D cells are also required to provide, install, and operate groundwater monitoring systems. The rules will require groundwater monitoring systems when vertical expansions are constructed over pre-RCRA, Subtitle D cells. Consistent with federal rules, the adopted rules do not require groundwater monitoring for those pre-RCRA, Subtitle D facilities that closed before applicable regulations came into effect.

§330.403. Groundwater Monitoring Systems.

Comment

Many public commenters stated that stricter groundwater monitoring testing requirements should be required around landfills. Representative Fischer and TCE commented that the proposed rules regarding groundwater well spacing allows permittees to argue for greater well spacing but does not allow affected landowners to argue for smaller well spacing.

Allied recommended that the existing regulatory approach, which requires well spacing to be determined solely on a site-specific basis, remain in place. The commission's existing rules provide that monitoring system design shall be based on site-specific technical information that must include a thorough characterization of many factors, including aquifer thickness, groundwater flow rate and direction, and the stratigraphy and hydraulic characteristics of saturated and unsaturated geologic units (30 TAC §330.23l(e)(1)). The groundwater monitoring system, including the number, spacing, and depths of monitoring wells, must be designed and certified by a qualified groundwater scientist based on these criteria (§330.23l(e)).

Allied stated that to impose a minimum well-spacing requirement is arbitrary in that it ignores all technical aspects of a landfill's geologic setting and liner design. The groundwater monitoring network is one of many design and operational components to ensure on-site waste containment, which include engineered liners, final cover systems, landfill gas monitoring system probes, and waste stabilization methods. The demonstrated effectiveness of modern landfill design, together with landfill siting in favorable hydrogeologic settings, lessens the role of groundwater monitoring.

Allied further commented that the proposed well spacing of 300 feet for the point of compliance monitoring system is also not cost-effective. If adopted, this requirement will at least double the number of groundwater monitoring wells at most facilities. The added costs of well installation, equipment (i.e., dedicated sampling pumps), sample collection, laboratory analysis, and statistical analysis are unwarranted for systems required to be certified by a qualified groundwater scientist. Fate and transport modeling is not a viable alternative to developing reasonable spacing requirements. Allied supported quantified well spacing based on site-specific data. The proposed minimum spacing requirement conflicts with other, more appropriate elements of the proposed rule providing for a site-specific analysis. Allied recommended revision of §330.403(a)(2) to delete minimum spacing requirements and alternative requirements based on multi-dimensional numerical flow models. Alternatively, Allied

suggested the commission could retain the proposed minimum well spacing, provided that the rule provides for an alternative well spacing based on the site-specific technical criteria in proposed §330.403(e)(1), rather than numerical flow modeling.

TxSWANA commented that the proposed rules require that all currently operating landfills come into compliance with a maximum 300-foot well spacing requirement, even those operating under a current permit with an approved well spacing greater than 300 feet. This will result in most all landfills statewide, including those owned by small cities and counties represented by TxSWANA, having to absorb an unanticipated cost that is not necessarily justified. TxSWANA expressed the belief that 300-foot well spacing is not justified at most sites. TCEQ's staff has not identified any basis for the new requirement other than that it is less than the existing requirement. Before asking municipalities and counties across the state to dip into their public coffers for more money, TxSWANA would appreciate a better and more scientifically sound basis for the change. At a minimum, TxSWANA expressed the belief that site-specific analysis other than modeling should be allowed to be used to justify an alternative default spacing. Factors such as groundwater flowlines, the nature of the geology, the depth to groundwater, the usability of the groundwater, and the amount of annual rainfall can be analyzed to determine the appropriate well spacing at any given site without the use of a fate and transport model. TxSWANA expressed the belief that the TCEQ's staff have sufficient expertise to individually judge what analysis might be appropriate for any given site. Flexibility should be placed in the rule to allow the TCEQ's competent and experienced technical staff to consider those factors at individual sites to allow a well spacing wider than the default when appropriate. TxSWANA objected to the requirement to use models also because TxSWANA expressed the belief that the amount of data necessary to conduct such modeling with any measure of accuracy requires significantly more site characterization than has been required historically or is economically justified by the resulting environmental protections; that there are so many assumptions--necessarily conservative assumptions--built into modeling that there are always data input variables susceptible to attack in modeling; and that the process of adjusting variables and rerunning the model can become reiterative and seemingly endless. TxSWANA also noted that the type of geology that is preferred for landfills (i.e., tight, seamless clays) is the most difficult if not impossible-to accurately model. A requirement to model would, therefore, make nonpreferred geology more preferred due simply to its ability to be modeled. Alternatively, the rule could result in the default 300-foot spacing being used in exactly those situations where monitor wells being that close to one another is not justified. Regardless of the distance, if there is to be a default distance, then TxSWANA specifically recommended that the default distance not be measured between wells themselves, but rather between groundwater flowlines. Considering the goal of groundwater monitoring, the appropriate spacing of monitor wells is more related to the distance between the flowlines that intersect monitoring well locations rather than strictly between the wells.

BME commented that previously, there was no requirement for a minimum groundwater well spacing. Since the implementation of RCRA, Subtitle D, groundwater monitoring systems have been designed and certified by a qualified groundwater scientist using the site-specific criteria established in the regulations such as are still included in the draft rules in §330.403(e)(1). The proposed new rule requires that exceptions to a prescribed 300-foot spacing can only be made based on an expensive fate and transport modeling effort. Yet, there are many appropriate traditional analyses that can be applied to determine the appropriate groundwater monitoring system design that do not require computer modeling. For instance, if the TCEQ believes that 300-foot spacing between wells at the appropriate point of compliance should be applied, it is important to consider the many variables such as groundwater flow direction and rate, permeability of the geologic formation, strategic location of monitoring wells related to the likely location of a source, likely source of contamination, and the resource value of the groundwater being monitored. Many sites are monitoring shallow, non-aquifer quality geologic formations with low transmissive qualities that contain shallow groundwater that cannot be produced in significant quantities for typical water wells. An example of this type of formation is the Taylor (Ozan) marl that outcrops in a northeast to southwest trending belt from northeast of Dallas to southeast of Austin. Several landfills are located in this excellent formation in Texas. More widely spaced wells would be appropriate in this formation. As currently written, the proposed rules provide no incentive for locating facilities in these types of low transmissive geologic units. The rule should allow the suspension of groundwater monitoring in these types of geologic formations or at least to allow a qualified groundwater scientist to use professional judgment that might result in a wider well spacing in formations that are actually aquicludes (as opposed to an aquifer).

In RCRA, Subtitle D landfills that are equipped with leachate collection systems that include sloped landfill bottoms and sumps, landfill leaks may tend to concentrate the leachate in the sumps and surrounding area. A groundwater monitoring system should be designed to have groundwater monitoring wells located immediately downgradient from the sumps of a leachate collection system without regard to an arbitrary minimum spacing. A common source of groundwater contamination from an MSW site is landfill gas related contaminants. In addition, unlike most industrial and hazardous waste sites whose wastes may have highly concentrated contaminant constituents, MSW sites have leachate with highly diluted constituent levels. At many MSW sites, landfill gas-related groundwater contamination has been successfully detected with the current monitoring well system spacing. Many of these sites have successfully remediated the landfill gas-related groundwater contaminants by the installation of landfill gas controls. Because landfill gas is the most likely groundwater contaminant related to an MSW site and the groundwater contamination results from the migration of landfill gas, the landfill gas perimeter probe system has to be considered an early warning part of the groundwater monitoring system. Increasing the number of landfill gas perimeter probes at certain sites may be more appropriate than increasing the number of groundwater monitoring wells.

Response

The commission adopts new §330.403(a)(2) to provide that monitoring well spacing for a municipal solid waste landfill unit shall not exceed 600 feet without an applicable site-specific technical demonstration that may be supplemented with a multi-dimensional fate and transport numerical flow model. In response to comments, the commission explained at its adoption meeting that existing landfills with monitor wells spaced greater than 600 feet apart are required to apply for a modification to comply with the 2006 Revisions. The commission has the authority to require a demonstration for well spacing less than 600 feet on a site-specific basis under §330.403(e). Applications for new permits or major amendments are subject to public input in the comment and hearing process related to whether closer monitor

well spacing should be required. The commission has revised §330.403(e)(2) to state that the owner or operator may use an applicable multi-dimensional fate and transport numerical flow model to supplement the determination of the spacing of monitoring wells or other sampling points.

The commission intends for owners and operators to examine and, where appropriate, redesign their current groundwater monitoring systems. The commission believes that some facilities may be able to substitute fewer upgradient wells for additional downgradient wells. The owner or operator may elect to plug or remove extraneous upgradient wells and install more wells within the downgradient region.

The commission adopts §330.407(b)(4), which allows the executive director to require an owner or operator to install additional groundwater monitoring wells for an MSW landfill that detects a statistically significant increase in monitored constituent concentrations to further characterize the release from the unit.

The commission also adopts §330.409(g)(1)(B), which requires an owner or operator to install additional monitoring wells between a monitoring well that has detected statistically significant levels above the groundwater protection standard of hazardous inorganic or organic constituents listed in Appendix II to 40 CFR Part 258 and the next adjacent wells along the point of compliance before the next sampling event.

Comment

RMR commented that in cases where landfills are sited in areas with limited to no groundwater or very deep aquifers the rules should be clarified to state that direct groundwater monitoring of the uppermost aquifer is not required where identification and characterization of the uppermost aquifer is not required by commission rules.

Response

Groundwater monitoring requirements may be suspended in accordance with §330.401(d) if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from a solid waste management unit to the uppermost aquifer during the active life and the closure and post-closure care period of the unit. The owner or operator may demonstrate this as part of the subsurface condition investigation required by §330.63(e)(4), which is part of the facility geology report. The rules require that groundwater monitoring system design be based on site-specific technical information derived from a thorough characterization of the aquifer. If an aquifer is not required to be identified or characterized by commission rules, the commission believes it is clear that monitoring of the aquifer is not required. The definition of aquifer in §330.3 has also been amended to reflect that geologic formations that are capable of yielding adequate groundwater for laboratory analysis are considered to be aquifers under Chapter 330. The commission made no change in response to this rule.

§330.405. Groundwater Sampling and Analysis Requirements.

Comment

Many public commenters stated that stricter groundwater monitoring testing requirements should be required around landfills.

Allied commented that the proposed rules should be revised to provide for transition procedures for the use of unfiltered groundwater samples and the development of reliable background data and to allow the use of filtered samples for alternate source demonstrations where turbidity is an issue. Allied stated that the commission staff has represented that many of the existing solid waste management units in Texas have collected (from the late 1980s to the mid-1990s) a sufficient amount of unfiltered background data and that this historical data may be used as background until additional unfiltered samples have been collected and added to the background pool. However, a review of Allied's groundwater data indicates that only eight of the 30 facilities operated or closed in Texas historically collected unfiltered background samples. Further, those samples were almost always collected for an alternate list of parameters, in accordance with existing §330.234(2). The alternate list generally included only eight of the heavy metals listed in 40 CFR Part 258, Appendix I. Thus, while in some cases eight unfiltered background samples may have been collected, they were not collected for each of the 15 heavy metals. As a result, only two of the 30 solid waste management units closed or operated by Allied in the State of Texas have sufficient numbers of unfiltered metals to be used as background for statistical analysis purposes. Assuming that a sufficient number of unfiltered samples were collected at other solid waste management units during the 1980s/1990s, there are several potential problems that could arise if these data are used as background. Numerous changes could have occurred to the groundwater monitoring program or system over the past ten years, and false positives could arise as a result of differences in laboratories, laboratory methods and reporting limits used, sampling procedures and personnel, or temporal variation.

Allied stated that facilities have historically established background by conducting quarterly groundwater sampling for a two-year period. If facilities will be required to perform quarterly monitoring on the existing groundwater monitoring network for at least a two-year period, install new groundwater monitoring wells in compliance with proposed §330.403, and perform quarterly monitoring for another two years to establish background on those wells, then this potential scenario will result in excessive costs that are not warranted. All of these circumstances must be addressed before an absolute requirement for unfiltered samples is implemented.

Response

The commission adopts §330.405(c) to no longer allow field filtering of groundwater samples prior to laboratory analysis. Owners and operators will be given the opportunity to reestablish background concentrations for groundwater monitoring constituents. Owners or operators may continue to sample and analyze groundwater in accordance with their approved groundwater sampling and analysis plan while also collecting and analyzing unfiltered groundwater samples. Owners or operators may continue to compare the results of filtered groundwater samples to currently established background concentrations while compiling unfiltered groundwater sample data. The commission anticipates that owners or operators may need to collect unfiltered groundwater samples for up to two years in order to reestablish background constituent concentrations. Once owners or operators reestablish background groundwater constituent concentrations based on unfiltered samples, they must modify their permits to transition from filtered to unfiltered groundwater monitoring data comparisons. Owners and operators may request to revise the list of groundwater monitoring constituents to be more representative of a release of hazardous constituents to groundwater.

§330.407. Detection Monitoring Program for Type I Landfills.

Comment

RMR commented that the provisions for detection and assessment monitoring continue to be confusing and contradictory. The commission acknowledged in other portions of the proposed rules that not all MSW landfills are created equal and for that reason the time frames established in proposed §330.407 and §330.409 should not be drafted so specifically and in such a limiting manner. RMR requested that the rules be revised in such a manner to allow the Groundwater Sampling and Analysis Plan developed for each landfill to address the issues of the detection and assessment monitoring process.

Response

The commission has made revisions, such as in §330.407(a)(1), to clarify the groundwater monitoring procedures. The rule has been written to provide clear, unambiguous direction to facilities, and allow the flexibility to produce a Groundwater Sampling and Analysis Plan that will address the sampling program of each individual landfill.

Comment

Allied commented that §330.407(a)(1) defines procedures for determining the independence of background samples, which are contrary to the practice of quarterly background monitoring.

Response

The commission agrees with these comments and has revised §330.407(a)(1) to better describe the procedures for establishing background groundwater constituent concentrations.

Comment

WMTX commented that, at a minimum, the notification period for a statistically significant change from background specified in §330.407(b) should be changed to 14 days, which is consistent with 40 CFR §258.54(c)(1) and allows the facility a reasonable time frame in which to address the statistically significant change.

Response

The commission agrees and has revised §330.407(b) to specify a 14-day notification period, consistent with federal regulations.

Comment

Allied commented that proposed §330.407(b)(3)(A) requires that a notification be sent to the executive director, within seven days of determining statistically significant evidence of contamination at the compliance point, that the owner or operator intends to make an alternate source demonstration. Proposed §330.407(b)(3)(B) allows up to 90 days for the demonstration to be prepared. A significant amount of information is typically necessary to make an acceptable alternate source demonstration. It often takes considerable time to determine whether an alternate source demonstration can be made or whether the well should enter into assessment monitoring, and seven days may not be enough time within which to determine whether an alternate source demonstration will be prepared. Moreover, this notification requirement serves no real purpose since the proper response actions are being taken by the owner or operator (i.e., submittal of an alternate source demonstration, verification resampling, or assessment monitoring). Allied further commented that because the notification requirement is onerous and provides no added protection to the environment, proposed §330.407(b)(3)(A) should be deleted.

WMTX commented that proposed §330.407(b)(3)(A) requires notice to the agency "within seven days of determining statistically significant evidence of contamination at the point of compliance" if the facility intends to make an alternate source demonstration. Notification of the intent to prepare an alternate source demonstration before verification resampling has occurred is unrealistic and unnecessary. Furthermore, a statistical analysis does not determine if there is "statistically significant evidence of contamination"; it is simply one of the tools used to evaluate the groundwater geochemistry.

WMTX recommended that proposed §330.407(b)(3)(A) be deleted in its entirety or, at the very least, revised to require notification of intent to make an alternate source demonstration within 14 days of a statistically significant change determination, which, as noted previously, is consistent with 40 CFR §258.54(c)(1).

Response

The commission agrees that the notification time frame is unnecessarily short and has revised §330.407(b)(3)(A) to specify a 14-day notification period.

Comment

Allied commented that §330.407(b)(3)(C) and §330.409(g)(2)(C) prohibits filtration of groundwater samples addressed by an alternate source demonstration. Allied noted that turbid groundwater samples contain formation fines that result in metals concentrations that are greater than the actual concentration in the groundwater. Many monitoring wells produce turbid groundwater samples especially when installed in fine-grained geologic units. Allied stated that the owner or operator should be allowed the opportunity to demonstrate that a potential statistically significant increase is the result of sample turbidity. Therefore, the owner or operator should be allowed to collect a field-filtered sample (perhaps in conjunction with an unfiltered sample if desired by the commission) in order to demonstrate the effect of turbidity.

WMTX expressed concern that proposed §330.407(b)(3)(C) may be interpreted to mean that field-filtered analytes cannot be used in an alternate source demonstration. If there is excessive turbidity in the unfiltered sample that caused the statistically significant change, then analyzing a field-filtered sample is frequently the appropriate demonstration. Additionally, there may be a need for the laboratory to filter the sample prior to analysis. WMTX also expressed concern that this rule could be interpreted to disallow the use of historical analytical results because the samples were field-filtered.

Response

Based on prevailing literature, colloidal transport is a major mechanism for the migration of contaminants, particularly inorganic constituents, in a groundwater system. Filtration of groundwater samples has the potential to remove this fraction of the groundwater contaminants and is therefore not allowed. Turbidity should not be a recurring problem in a properly installed and developed groundwater sampling well. If there is an ongoing problem with turbidity, then consideration should be given to replacing the well. A facility can submit both filtered and unfiltered analytical results for consideration in an alternate source demonstration. Since facilities will have to reestablish background groundwater constituent concentrations using unfiltered analytical results, historical analytical results should not be an issue.

Comment

WMTX commented that proposed §330.407(b)(3)(D) provides that an owner or operator making an alternate source demonstration should, as part of that demonstration, apply to amend or modify its permit "if appropriate" to make any necessary changes to the detection monitoring program at the facility. A determination of whether a change to the monitoring program is necessary should occur after the alternate source demonstration has been resolved, not as part of the alternate source demonstration report. Per the proposed regulation, a facility has 90 days in which to submit its alternate source demonstration report following the statistically significant change determination. However, as proposed, the facility would have to submit an application to amend or modify its permit within that same 90-day period. Furthermore, WMTX stated that this subsection is unnecessary in light of §330.407(b)(5), which requires the owner or operator to amend or modify its permit if the facility's detection monitoring program no longer satisfies the regulatory requirements. For these reasons, WMTX recommended that proposed §330.407(b)(3)(D) be deleted in its entirety.

Response

The commission agrees that §330.407(b)(3)(D) is redundant with other rule provisions and has deleted this proposed subparagraph in its entirety.

Comment

WMTX commented that proposed §330.407(b)(5) establishes a 90-day deadline; however, the event that commences the 90-day period is not clear.

Response

The commission has repositioned proposed §330.407(b)(5) to §330.407(d) and has revised this subsection to state that the 90-day deadline begins when the owner or operator determines that the groundwater monitoring system no longer satisfies §330.407.

Comment

WMTX commented that preparation of an annual detection monitoring report within 60 days of the monitoring event itself is problematic. It typically takes 45 days for the facility to obtain the analytical results and another 15 days to conduct the statistical evaluation to determine whether there has been a statistically significant change. Thus, the statistically significant change determination itself typically takes 60 days. This time frame is expressly contemplated by TCEQ's proposed regulation concerning statistically significant change determinations, §330.407(b). Accordingly, facilities should be given at least 90 days after the monitoring event to prepare their annual detection monitoring reports. WMTX further commented that the information the agency proposes to require with the annual detection monitoring report submittal is duplicative and unnecessary. Only the statement in proposed §330.407(c)(1) should be required. If a statistically significant change has occurred in the previous calendar year, then, under §330.407(b), the owner or operator will have already submitted the bulk of the information required in proposed §330.407(c)(2) - (5). WMTX stated that if the owner or operator files a statement, under proposed §330.407(c)(1), stating that no statistically significant change has occurred in the calendar year, the owner or operator should not be required to submit a year's worth of data and other documentation to support that statement.

Response

The commission agrees that the owner or operator should have up to 90 days to prepare and submit an annual detection monitoring report and has revised this subsection accordingly. The commission believes that the annual detection monitoring report elements are necessary to document how the owner or operator determined whether a statistically significant increase has occurred for the past year. The commission does not concur with the remaining comment and has made no other changes.

Comment

Allied commented that proposed §330.407(c)(2) requires the annual detection monitoring report to provide background groundwater quality values, groundwater monitoring analyses, and statistical calculations, graphs, and drawings. These elements are unnecessary. Allied further commented that the inclusion of a summary of background quality values should not be required due to the excessive time required to prepare a table of results for inclusion in the report. Rather, the report should state what the background period involves. Allied stated that the TCEQ already has the background data because it has been electronically submitted and compiled in a computer database. Further, the types of calculations, drawings, and graphs required are vague, and except for a table or statement regarding the constituents that exceed statistical limits (with monitoring well IDs), such documents provide no additional value. A groundwater contour map would already be required by proposed §330.407(c)(4).

Response

The commission believes that the annual detection monitoring report elements are necessary to document how the owner or operator determined whether a statistically significant increase has occurred for the past year. The commission has made no change in response to these comments.

§330.409. Assessment Monitoring Program.

Comment

WMTX commented that new facilities should not be required to demonstrate compliance with §330.409 (relating to Assessment Monitoring Program) prior to waste placement in the unit.

Response

A statistically significant increase over background constituent concentrations is premised on waste placement having commenced. No changes were made in response to these comments.

Comment

Allied commented that proposed §330.409(b) requires that all point of compliance wells be sampled for Appendix II constituents upon initiation of assessment monitoring. Further, proposed §330.409(b) requires that background wells be sampled for any newly detected Appendix II constituents. Although the proposed wording is similar to the requirements of the current regulation (§330.235(b)(2)), it is much more rigorous than what is actually performed during the initiation of assessment monitoring. Currently, the practice is for a specific well or wells to enter into assessment monitoring, not the entire site. This procedure appears to be practical, protective of the environment, and cost effective. It is impractical for all point of compliance wells to be sampled for Appendix II constituents when only a given well or wells exhibit signs of contamination. It is Allied's experience that the initial Appendix II analysis rarely identifies any new constituents, even in impacted wells.

Therefore, it is an impractical and costly burden for all point of compliance wells to be sampled for Appendix II constituents.

Further, the need to sample background (upgradient) wells for any newly detected Appendix II constituents is unwarranted. The need for background for these constituents is so that a determination can be made as to whether the constituent(s) statistically exceed groundwater protection standards. This statistical procedure is only performed on an intra-well basis. Therefore, background only needs to be established in the well(s) entering into assessment monitoring. Allied further commented that proposed §330.409(b) is overly burdensome and should be revised to strike the sentence, "For any new constituent(s) detected in the point of compliance wells as a result of the complete Appendix II analysis, a minimum of four statistically independent samples from each background well shall be collected and analyzed to establish background levels for the additional constituent(s)."

Response

The commission believes that once assessment monitoring has been triggered, it is appropriate that all point of compliance wells be sampled for Appendix II constituents to determine the need for an expanded monitoring program. The collection of samples from background wells is necessary to determine if the constituents are present in background groundwater quality and therefore not the result of a release from the landfill. No change has been made to the rule in response to these comments.

Comment

WMTX commented that sampling for assessment constituents should not be required for background wells if the evidence indicates that the new constituent is not the result of a release from the solid waste management unit. Additionally, data from background wells may be irrelevant to assessment monitoring if the owner or operator uses intra-well statistical analysis or requests that the agency establish an alternative groundwater protection standard in accordance with §330.409(i)(5). Furthermore, if the owner or operator can document that an Appendix II constituent is not reasonably expected to be in or derived from the waste contained in the unit, then it is unnecessarily expensive to sample all point of compliance wells for Appendix II constituents.

Response

The commission will not require sampling for assessment constituents from background wells if the new constituent is not the result of a release from the solid waste management unit, as determined by an alternate source demonstration under §330.407(b)(3)(B). The owner or operator will be required to sample all point of compliance wells for Appendix II constituents if no other source than the solid waste management unit has been identified. The entire well system will enter into the assessment monitoring phase once the owner or operator determines that the solid waste management unit has released hazardous constituents to the groundwater. The results of sampling all wells will be used as the basis to remove constituents not reasonably expected to be in or derived from the waste contained in the unit. For any additional Appendix II constituents detected in point of compliance wells, the owner or operator must sample background wells to determine whether the groundwater naturally exceeds the groundwater protection standards for those detected Appendix II constituents. This determination is not limited to intra-well comparisons. A new Appendix II constituent detected in a downgradient well after waste placement has commenced that is not found in an upgradient well will be assumed to come from the waste management unit. The commission made no changes in response to these comments.

Comment

Allied commented that proposed §330.409(d) requires that owners or operators submit the results of the initial and subsequent assessment sampling events to the executive director within 60 days of each sampling event. A similar requirement does not exist for detection monitoring. Proposed §330.409(k)(2) also requires the submittal of groundwater monitoring, testing, and analytical work. As a result, proposed §330.409(d) and (k)(2) cause data for the first semiannual event to be submitted twice. Allied further commented that the TCEQ should reconsider these duplicative requirements.

Response

The reporting of the annual full Appendix II scan required by §330.409(b) is consistent with the annual reporting requirement for detection monitoring. The owner is required by §330.409(k)(2) to submit an annual report for the semiannual assessment monitoring events. Assessment monitoring data is not submitted twice in a year. The commission has made no changes in response to these comments.

Comment

Allied commented that proposed §330.409(k)(1) should be clarified to provide for a statement of whether a constituent concentration, rather than a statistically significant change, has exceeded a groundwater protection standard.

Response

There may be instances where background groundwater constituents exceed the groundwater protection standards for certain naturally occurring Appendix II constituents. For these instances, an annual statement regarding a statistically significant level above the groundwater protection standard is more appropriate. No changes were made in response to these comments.

Comment

WMTX commented that, at a minimum, the notification period for finding statistically significant levels of constituents above the groundwater protection standard as specified in §330.409(g)(2)(A) should be changed to 14 days, which is consistent with 40 CFR §258.55(g) and allows the facility a reasonable time frame in which to address the statistically significant change.

Response

The commission agrees and has revised §330.409(g)(2)(A) to specify a 14-day notification period, consistent with federal regulations.

§330.415. Implementation of the Corrective Action Program.

Comment

Allied commented that proposed §330.415(e) contains an apparent typographical error requiring the submittal of an annual assessment monitoring report. Allied stated that because proposed §330.409(k) already requires submittal of this report, proposed §330.415(e) should be corrected to provide for an annual corrective action report. In addition, Allied commented that proposed §330.415(e)(1) should be revised to provide for a statement of whether a constituent concentration, rather than a statistical change, has exceeded a groundwater protection standard.

Response

The commission appreciates the comment regarding the incorrect report name and has corrected §330.415(e) to provide for an annual corrective action report. Since a facility in assessment monitoring already has a detected release of constituents to groundwater, the next appropriate action level is whether the release has exceeded a groundwater protection standard. A groundwater protection standard may be based on a maximum contaminant level allowed in drinking water or an alternate contaminant level. Particularly for constituents that are naturally occurring in background groundwater concentrations, there may be occasion to establish when a constituent has exceeded a groundwater protection standard with statistical certainty. For this reason, the owner or operator is responsible for stating whether a statistically significant level above a groundwater protection standard has occurred. The commission has made no additional changes in response to these comments.

Comment

WMTX commented that TCEQ proposes a date-specific deadline for submittal of the annual corrective action report--March 1st of each year. March 1st, of course, is roughly 60 days into the new year. WMTX stated that as noted previously in its comments on §330.407(c), 60 days is insufficient for preparation of the annual report; 90 days--or April 1st of each year--is sufficient. WMTX further commented that the agency should clarify that submittal of the annual corrective action report is only required for each year of operation of the selected remedy (rather than "every year").

Response

The commission agrees with these comments and has revised §330.415(e) to require the submittal of an annual corrective action report by April 1st of every year. The commission has further revised this reporting requirement to apply upon implementation of the corrective action program.

§330.417. Groundwater Monitoring at Type IV Landfills.

Comment

WMTX commented that the citations within §330.417(a) to §330.5(b)(2) and §330.5(c) for Type IV landfills are incorrect.

Response

The commission appreciates these comments and has corrected the cross-references to refer to §330.5(a)(2) and §330.5(b), respectively.

Comment

WMTX commented that the term "shallow water-bearing zone" is not defined in §330.417(b)(1). It is not clear whether this term is synonymous with "uppermost aquifer."

Response

The commission agrees with these comments and has revised the paragraph to refer to the uppermost aquifer.

§330.421. Monitor Well Construction Specifications.

Comment

WMTX commented that centralizers are rarely used for monitor well installation. Additionally, many facilities use metal protective pipe collars, but not steel collars. WMTX further commented that proposed language regarding use of centralizers in §330.421(a)(2)(A) should be removed from the regulation. WMTX recommended that the reference to "steel" collars in §330.421(a)(4) be revised to refer to "metal" collars.

Response

The commission has revised §330.421(a)(2)(A) to establish the performance standard that the well casing should be centered, but does not specify the technique, allowing the owner or operator to determine the best technique for the situation. The commission did not change the reference to steel collars.

Subchapter K: Closure and Post-Closure

§330.457. Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993.

Comment

WMTX suggested that TCEQ allow closure cost estimates to be based on the waste fill area that could potentially be open in the following year, but the agency did not also revise §330.457(e)(2) accordingly. Therefore, the current proposed rules are inconsistent with respect to closure cost estimates.

Response

The commission intends for the closure plan to describe the maximum extent of a landfill ever requiring final cover to be specified. The closure plan will not require annual revision, unlike the cost estimate for closure. The commission made no changes in response to these comments.

Comment

Allied and WMTX commented that proposed §330.503(a), relating to closure cost estimates for landfills, appropriately clarifies closure cost calculations by requiring the estimate to show "the cost of hiring a third party to close the largest waste fill area that could potentially be open in the year to follow and those areas that have not received final cover in accordance with the final closure plan." Proposed §330.457(e)(6), which specifies closure plan contents, should be conformed to proposed §330.503(a).

Response

The commission agrees that proposed §330.457(e)(6) differs from §330.503(a) regarding cost estimates for closure. Since Subchapter L contains the requirements for cost estimates, the commission has deleted the unnecessary redundancy of §330.457(e)(6) from Subchapter K.

Subchapter L: Closure, Post-Closure, and Corrective Action Cost Estimates

§330.507. Post-Closure Care Cost Estimates for Landfills.

Comment

WMTX commented that the post-closure cost estimates of §330.507(a) should be related to the area needing post-closure for the following year, consistent with respect to closure cost estimates.

Response

The commission agrees with these comments and has revised this subsection to account for the total costs of conducting post-closure care for the largest area that could possibly require post-closure care in the year to follow over the entire post-closure care period. The commission also deleted proposed §330.507(a)(1) as being potentially confusing and redundant with §330.507(a).

Subchapter M: Location Restrictions

§330.543. Easements and Buffer Zones.

Comment

Representative Fischer, TCE, and many individuals expressed the concern that the proposed 125-foot buffer zone from a landfill was not sufficient, that super-sized landfills need bigger buffers to protect neighbors. The commenters requested that the commission impose greater buffer zones on landfills.

HCPHES was pleased to see the increase in the buffer zone, provided in proposed §330.543, from 50 to 125 feet and recommended additional considerations based on the size of the facility.

NAG commented that a 125-foot landfill buffer zone was totally inadequate. Landfills continue to emit gases long after they are closed and after a 30-year post-closure monitoring period, all generated methane is emitted to the atmosphere. Additionally, buffers must give neighboring residences and subdivisions a feeling of safety from the impact of gases above ground in the form of odors, and underground where landfill gases can migrate to closed structures through utility lines. Provisions for alternative buffers should not be allowed for landfills that consistently receive odor complaints and for facilities that consistently report exceedances of gases. Since gases increase when a landfill expands vertically, odors from gases and migration of gases will increase as well. This commission must recognize that a 125-foot buffer is not protective enough from a 300-acre landfill (or bigger) when small children are playing in a day care school yard nearby. Windblown wastes are harder to control within a small buffer area, especially when the landfill is operating at a real high altitude. Adequate drainage controls for surface water flows are difficult to install in a small buffer zone. The rules need to specify that public roads and ditches cannot be part of a buffer, especially in populated areas. Regional landfills should be required to have a minimum 100-yard (300-foot) buffer zone.

Allied supported the minimum buffer zone size of 125 feet but requested further clarification on how the buffer zone dimensions will be established and the uses permitted in this zone. Allied requested that this provision state that for expansions of existing landfills, the increased buffer zone distance only applies to the area of the expansion, that existing landfill footprint areas with a buffer zone distance of less than 125 feet should not preclude vertical expansions and expansions in other areas within the site that can provide the increased buffer zone. Also, Allied requested that the requirement that buffer zones must be within property, owned or controlled by the operator should be revised to clarify the meaning of buffer zone ownership and control and to specify that utility easements, roads, drainage features, and other landfill appurtenances may be located in this buffer zone. Since the intent of the buffer zone is to provide physical separation of waste disposal areas from adjacent property, the location of non-disposal activities in this zone will not diminish the achievement of this objective and should be prescribed as appropriate.

TxSWANA commented that the proposed rule could prevent the expansion of any landfill in the state that currently has waste located within 125 feet of the facility boundary. Much of the long-term solid waste planning in the state depends on the ability to expand existing facilities. Interfering with that long-term solid waste planning could result in inadequate disposal capacity and severe economic fluctuations in solid waste disposal rates.

Response

The commission believes that the 125-foot buffer zone distance for a Type I landfill strikes a balance between the interests of all commenters and ensures adequate space to meet the performance requirements established in §330.543(b)(3)(B)(i) - (iv) to provide for: visual screening; access for emergency response, maintenance, and monitoring; control of odors and windblown waste; and control of drainage and sediment runoff. The rule has been revised in response to comment to provide that only the portion of the landfill unit impacted by an expansion is subject to the 125-foot buffer zone requirement. For a vertical expansion, the buffer distance must be measured from the outermost edge of the newly permitted solid waste disposal airspace. For a lateral expansion, that does not include a vertical expansion of an existing permitted area, the previously permitted area is not subject to the new 125-foot buffer zone requirement. The commission intends for buffer zones to fall within and adjacent to the facility boundary on property owned or controlled by the owner or operator. Public rights-of-way and public roads on property not owned or controlled by the owner or operator must not be located within the area designated as buffer zone. The commission is aware that some landowners have granted easements for public roads while retaining ownership of the land beneath the public road. In such cases, the owner would be allowed to include this property as part of the buffer zone. If the 125-foot buffer zone is not feasible, the owner or operator will have to demonstrate an alternative distance that satisfies the performance requirements of §330.543(b)(3)(B)(i) - (iv).

Comment

HCPHES commented that in instances where the executive director has discretionary authority to allow alternatives to the rule provisions, minimum standards or factors should be provided in the rules to provide notice on how the executive director will make such a decision, and the process involved (e.g., buffer requirements). The rules should clearly state that any alternative designs must be equally as effective or more stringent.

Response

When the rules provide discretion to the executive director, the commission makes efforts to provide standards and factors to be considered by the executive director to the extent practicable. As to the executive director considering alternatives to buffer requirements, §330.543(b)(3) specifies the minimum standards for the executive director to consider. These standards set an appropriate level of protection for the public, and they were not changed in response to this comment.

§330.547. Floodplains.

Comment

TCE commented that the TCEQ should clearly set forth that new MSW landfills will not be permitted within the 100-year floodplain. Such locations are simply unsuitable for landfills, as there is an unacceptable risk of water infiltrating the landfill, and possibly disrupting safe landfill operations.

NAG commented that because of added construction and impervious cover in the watershed over the years, the delineation of a floodplain can change drastically before the flood maps are updated. Therefore, a greater distance from floodplains should be required for landfills because these facilities cannot be moved.

Response

Prohibiting landfills from being located in floodplains would have a far-reaching impact on the appropriate areas where future

landfills could be sited. The commission is not prepared at this time to ban MSW landfills from being located in floodplains. The commission instead prefers to have owners or operators design their MSW facilities to have proper drainage that prevents adverse impacts to the surrounding landowners. The commission recognizes that floodplain locations can change and that FEMA maps may not always be accurate, so the rule has been changed to state that FEMA maps are prima facie evidence of floodplain locations.

§330.601. General Requirements.

Comment

HCPHES noted that the commission solicited comments on whether Subchapter N should be expanded beyond mining activities to include any type of waste removal and relocation. HCPHES supported this expansion of applicability since this type of removal has occurred in Harris County and HCPHES anticipates others will occur. HCPHES commented that this type of activity needs standards to govern the waste removal operation or require a removal plan that will safeguard the environment and those located near the site of waste removal.

Response

The comment is acknowledged. While no other specific comments were received on Subchapter N providing recommended rule language, some additions to the rule language were made in response to this comment.

Subchapter O: Regional and Local Solid Waste Management Planning and Financial Assistance General Provisions

Comment

HCPHES commented that the pending COGs regional solid waste plans should not be subject to the proposed rule revisions. Also, for local plans, the proposed rules should provide: the requirements of this subchapter will be implemented 180 days after the effective date of this subchapter.

Response

The commission believes that implementing the proposed change will not place an undue burden on the COGs or local governments. The proposed rule changes are meant to streamline the adoption of regional and local plans. No change is made in response to this comment.

Comment

HCPHES commented that while the newly structured regional solid waste management plans would be adopted by commission rule, the implementation plans would only require executive director approval. HCPHES feels that this would create a bifurcated two-plan system which is inconsistent with statute and would diminish the enforceability of the regional or local plans.

Response

The commission does not believe that providing for executive director approval creates a bifurcated two-plan system. The commission believe that executive director approval is consistent with statute. By statute, the regional and local plans cannot conflict with existing rules. The proposed revision helps ensure consistency of the plans with Chapter 330. No changes were made in response to this comment.

Comment

HCPHES commented that the regional or local solid waste management plans should include all components in current rule or that the current rules should remain in place without any of the proposed changes.

Response

By statute the regional and local solid waste management plans cannot conflict with existing rules. The proposed revision helps ensure consistency of the plans with Chapter 330. No changes were made in response to this comment.

§330.639. Public Participation Requirements for Solid Waste Plans.

HCPHES commented that §330.639(a) deleted the second sentence about advisory members and criteria for appointment without explanation and should be reinstated.

Response

The commission acknowledges the inadvertent deletion and has restored the deleted sentence.

§330.641. Procedures for Regional and Local Plan Submission, Approval, and Distribution.

Comment

WMTX commented that the proposed requirement to require methane gas monitors within 1,000 feet of a closed landfill facility should be removed.

Response

The commission has removed this inadvertent language. The commission has revised the referenced sentence to include an advisory to the chief planning official of each municipality and county within the planning region that all enclosed structures over a closed landfill must comply with Chapter 330, Subchapter T.

Subchapter T: Use of Land Over Closed Municipal Solid Waste Landfills

Comment

The City of Austin made several comments about removing from the existing rules any considerations about off-site impacts of the development or monitoring of off-site structures for methane.

Response

The commission does not generally require methane monitoring beyond an enclosed structure that is built or will be built over an old, closed landfill, consistent with the statutory authority of THSC, Chapter 361, Subchapter R, Use of Land Over Municipal Solid Waste Landfills, unless required in response to known methane migration. However, it may be prudent for a builder or developer to take precautions when constructing a building adjacent to or near an old, closed landfill, such as testing the subsurface for methane migration or voluntarily installing methane monitors. No changes were made in response to these comments.

§330.951. Definitions.

Comment

The City of Austin commented that by requiring "recorded boundaries" in the definition of closed MSW landfills, the majority of pre-Subtitle D landfills which have rarely recorded their boundaries may be exempt from meeting the definition. The city requested that the commission delete the reference to "recorded

boundaries" and change the definition of closed MSW landfills to make a different distinction between old landfills' permitting status.

Response

The commission removed the requirement of "recorded boundaries" from the §330.951(3) definition and modified it to define closed MSW landfill as a permitted or previously permitted MSW landfill, an MSW landfill that has never been permitted, or a dumping area as defined in this section, which stopped receiving waste and completed closure and post-closure activities.

Due to this change, the following provisions will be modified: §§330.951(7), 330.952(a)(1) and (b)(1) and (2), 330.954(a), (a)(1), (5) - (7), and (d)(3), 330.956 (title), 330.957(a), (o), (q)(1)(A) and (A)(ii), 330.959(a), 330.960, 330.961 (title), 330.961(c), 330.963(a) and (b), and 330.964 to delete "dumping area." "Dumping area" will be replaced by "closed MSW landfill" throughout §330.962.

§330.952. Applicability and Exemptions.

Comment

The City of Austin requested the commission to clarify whether deleting the "local government officials" from this section was intended to exempt them from compliance with Subchaper T requirements if the local government is the owner of the site subject to the rule.

Response

The requirements of Subchapter T apply to persons owning, leasing, or developing a property which is subject to §330.952(a)(1), including a local government. The commission has determined that specifically listing local government officials and professional engineers in this paragraph is unnecessary. No changes were made in response to these comments.

Comment

The City of Austin requested that the commission add a definition for housing subdivision and to clarify whether a tract subdivided into two tracts for single-family home building is exempted from Subchapter T requirements.

Response

The commission does not consider a definition for housing subdivision to be necessary since this issue is covered by the definition of development in §330.951(6), which includes construction of residences for three or more families. Accordingly, construction of a single-family or double-family home is exempted from the requirements of Subchapter T, regardless of whether the tract is divided into two tracts or not, but it is considered a subdivision if used as a development for residences for three of more families. No changes were made in response to these comments.

§330.953. Soil Test Required before Development.

Comment

TDS commented that it was unclear what happens after a landfill is discovered on a property through soil boring tests and the various entities, including TCEQ, are notified. TDS also commented that most developers have no idea about the soil boring requirement and enforcement would imply a monumental effort.

Response

After the engineer notifies all parties that a tract of land overlies a closed municipal landfill, the owner is obligated to deed record the property in accordance with §330.19, the staff of the executive director may inform the owner regarding any future requirements of Subchapter T when developing the property, the local government officials would be able to contact the owner regarding any local requirements, and the regional COGs would add the property to the closed landfill inventory. The phrase "upon discovery of a closed municipal solid waste landfill or dumping area" has been added to §330.19(c) to clarify the obligation to deed record upon discovery of buried waste. The commission notes that the rules give three options for complying with soil testing requirements to allow flexibility. Option Test 1 does not require subsurface investigation in the form of soil borings. The commission continually strives to keep the public informed about rules and their changes. The commission works with the COG regarding the implementation of this subchapter and disagrees that compliance is a monumental effort.

Comment

The City of Austin requested that the commission add language regarding sufficient number of borings or excavations for Soil Test III similar to the one used for Soil Test II.

Response

The Test II soil borings are meant solely for the purpose of finding a closed solid waste landfill. The Test III soil borings may be conducted for environmental, geotechnical, or housing and urban development purposes. Any of these purposes may dictate the frequency of the borings. No changes were made in response to these comments.

§330.954. Development Permit, Development Authorization, and Registration Requirements, Procedures, and Processing.

Comment

The City of Austin considered §330.954(a)(2) to be redundant and potentially confusing regarding the definition of closed MSW landfills. It also considered §330.954(a)(3) to exempt dumping areas with defined boundaries from the permit requirement.

Response

The intent of these two paragraphs was to differentiate between the situations of closed MSW landfills with determined limits, in which case the development permit requirement would apply to the area over the determined closed MSW landfills or recorded permit boundaries, and the closed MSW landfills with unknown boundaries, in which case the development permit requirement would apply to the entire property. To eliminate confusion about exempting the dumping areas with unknown boundaries from the development permit requirement, the commission is deleting the part of the §330.954(a)(3) that follows after the comma, and adding a second sentence to §330.954(a)(2) as follows: "The exact waste boundary may be determined through soil boring tests in accordance with §330.953 of this title (relating to Soil Test Required before Development), or through alternative investigation methods approved by the executive director."

Comment

The City of Austin requested clarification of when a public meeting is required.

Response

Section 330.954(b)(1) refers to the criteria contained in §55.154(c), Public Meetings, which provides a reasonable basis for when public meetings will be held consistent with other

commission programs. No changes were made in response to these comments.

Comment

The City of Austin requested that the purpose of the public meeting in §330.954(b)(1) be stated.

Response

The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and commission staff to provide information to the public. The rule has been modified to state the purpose.

Comment

The City of Austin requested clarification of the registration requirements and prohibition of disturbance of final cover for dumping areas.

Response

The commission previously addressed this comment in this preamble in the response to the §330.951 comment relating to the definition of a closed MSW landfill.

§330.955. Miscellaneous.

Comment

The City of Austin commented that former §330.955(a) was deleted and no provision prohibiting disturbance or alteration of final cover is included in the proposed rules.

Response

Former §330.955(a) has been moved to §330.954(e)(1), which prohibits any type of violation of the integrity of final cover without prior authorization of the executive director. No changes were made in response to these comments.

Comment

The City of Austin commented that portions of §330.955, Prohibitions, are not appropriate for requirements describing how the executive director may require additional cover or allow small amounts of waste to be backfilled.

Response

The commission agrees with these comments and has revised the title of the section from "Prohibitions" to "Miscellaneous."

Comment

HCPHES commented that §330.955(c) allows small amounts of solid waste to be redeposited in a closed landfill and that "small amounts" is not defined. HCPHES recommended that the language be changed to state that the executive director may allow small amounts of solid waste that are residuals from a soil test to be redeposited in the closed MSW landfill on a case-by-case basis.

Response

Section 330.955 is entitled Soil Test Required before Development. The commission believes that allowing the redeposition of small amounts of solid waste in this subsection grants flexibility for investigations and minor disturbances to final cover. No changes were made in response to this comment.

Comment

The City of Austin requested clarification of the term "properly discharged" in §330.955(f) for the contact wastewater.

Response

The commission has modified §330.955(f) in response to these comments to add "in a manner that will not cause surface water or groundwater contamination."

§330.956. Application for Proposed or Existing Constructions Over a Closed Municipal Solid Waste Landfill Unit, General Requirements.

Comment

The City of Austin urged the commission to retain the requirements of §330.956(g)(5) related to the description of the environmental conditions of the site and immediate vicinity.

Response

The commission concurs with the request and has retained the original §330.956(g)(5), which has been relettered as §330.956(d).

§330.957. Contents of the Development Permit and Workplan Application.

Comment

The City of Austin requested inclusion of a requirement for notice to local agencies, as well as for submittal of aerial photography of the site.

Response

The commission concurs with the requests and has retained §330.957(c) - (e) related to evidence of competency, notice of appointment and notice of coordination, as well as §330.957(i) concerning aerial photography. Subsequently, all the subsections, (e) - (r), have been relettered.

Comment

The City of Austin requested that the commission change "on-site permanent enclosed structure" in §330.957(q)(1)(A), which may narrow the types of construction that are required to monitor for landfill gas, to more general language.

Response

The commission has broadened the requirement by replacing ". . . new on-site permanent enclosed structure built over . . ." with ". . . new enclosed structure built or installed over . . ." in response to these comments.

Comment

TDS commented that pipes are not the only alternative for venting gas and requested that the design engineer be allowed to propose solutions for accomplishing the objective of venting beneath a foundation.

Response

The commission agrees and has revised §330.957(m)(1)(D) to state "Perforated venting pipes or alternative venting methods approved by the executive director shall be installed . . .."

§330.961. Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit, or a Municipal Solid Waste Landfill in Post-Closure Care.

Comment

TDS requested a clarification about what the requirement for double containment of all fluid conduits placed over an old landfill is intended to accomplish.

Response

The requirement for double containment of all fluid conduits placed over an old landfill is intended to prevent fluid percolation into the waste, which may increase the risk of methane generation and groundwater pollution. No changes were made in response to these comments.

Subchapter U: Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations

§330.983. Definitions.

Comment

Allied commented that the definition of bioreactor should be revised to ensure that any landfill operation recirculating leachate or condensate is not considered to be a bioreactor landfill subject to more stringent Chapter 330 requirements. TDS stated that the definition should be made identical to the same definition in §330.3(15) or deleted.

Response

The commission has removed the authorization for bioreactors from Chapter 330 due to concerns regarding design, operation, and conformance with the federal RCRA, Subtitle D program.

Comment

Allied recommended adding references to Chapter 113, Subchapter D to the definitions of Category 1 - 3 landfills to indicate that these landfills are subject to emission guidelines as well as 40 CFR Part 60, Subpart WWW.

Response

The commission has changed the rule in response to these comments. The Chapter 113 requirements are specifically applicable to landfills and including the citations makes the rule more precise.

Comment

Allied and WMTX recommended deleting the definition of modification and that only one definition, modification to existing facilities be used. Allied also requested that additions of facilities under the standard permit not be considered modifications.

Response

The commission has not changed the rule in response to these comments. Both terms are required for the standard permit. The term "modification" refers to an expansion of the excavated areas of the landfill and is consistent with 40 CFR Part 60, Subpart WWW. The term "modification of an existing facility" means a modification resulting in an increase in air emissions and follows the definition in Chapter 116. For the standard permit, this term has a broader meaning as it can also apply to support facilities at the landfill.

Comment

WMTX commented that the definitions for Categories 1, 2, and 3 landfills should be deleted because they repeat definitions found in 40 CFR Part 60, Subpart WWW.

Response

The commission has not changed the rule in response to these comments. The definitions included in the standard permit are not specifically defined in 40 CFR Part 60, Subpart WWW. The standard permit definitions are consolidations of federal requirements based on emission rates from the landfill, and the commission is including them to help eliminate confusion and add convenience for users of this rule.

Comment

Allied recommended deleting from the standard permit any citations of definitions in Chapter 116, and rely on the Chapter 116 definitions that have been added to Chapter 330.

Response

The commission has changed the rule in response to these comments. The commission agrees with the commenter that the reference to Chapter 116 is redundant. The commission is keeping the text of the definition in Subchapter U for convenience.

§330.985. Applicability and Exceptions.

Comment

Allied commented that a reference to the TCAA should be added to §330.985(a) as an authorization for creating the air standard permit. The commenter also requested a statement in the subsection that an authorization under that standard permit is not subject to Texas Government Code, Chapter 2001.

Response

It is not necessary to add a TCAA citation to the standard permit in response to these comments. In the STATUTORY AUTHORITY portion of the preamble, the commission cites to the appropriate sections of the TCAA as its authority for adopting this standard permit. The commission is adding language to this section, consistent with TCAA, §382.05195(g) and 30 TAC Chapters 39 and 50, that each individual authorization under a standard permit is not subject to public notice and comment or opportunity for contested case hearing.

Comment

Allied commented that the new air standard permit should continue to provide an authorization for Type IX landfill sites and landfill gas beneficial use facilities.

Response

The commission has not changed the rule in response to these comments. Type IX facilities do not conduct operations authorized by this standard permit. Type IX facilities are landfill gas to energy projects that require separate commission authorization for air emissions. The commission has an electric generating facility standard permit available for use by these types of facilities.

Comment

Allied recommended that the reference to 40 CFR Part 60, Subpart WWW be removed from §330.985(d)(2)(A) because the proposed rule refers to certain prohibited types of incineration and it is unclear whether the reference to 40 CFR Part 60, Subpart WWW is intended to define "incineration" or "landfill gas emissions."

Response

The commission has not changed the rule in response to these comments. The reference to 40 CFR Part 60, Subpart WWW is applicable to the term "landfill gas emissions." This reference is necessary to describe that certain emissions from incineration are not being excluded from authorization under this standard permit.

Comment

HSC commented that the commission should add Chapter 111, Control of Air Pollution from Particulate Matter, to the list of regulations that MSW transfer stations must meet.

Response

The commission has not changed the rule in response to these comments. The addition is unnecessary because Chapter 111 applies to any facility generating PM.

Comment

HSC expressed concern that the commission lacked specific information on the characteristics and quantity of emissions from transfer stations and suggested hiring a consultant. HSC specifically expressed concern about potential sources of nuisance odors.

Response

The commission has considered information submitted by stakeholders on transfer stations not located at MSW landfills. That information was sufficient for the commission to conduct its evaluation. The commission analyzed compounds for nuisance conditions, as well as for protection of public health and welfare. Specifically, the commission has reviewed three odorous compounds from Table 2.4.1, "Default Concentration for Landfill Gas Constituents," in the EPA guidance document AP-42 Fifth edition, "Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources." The compounds evaluated were dimethyl sulfate, ethyl mercaptan, and methyl mercaptan, which are common odor-producing compounds, and the commission determined that the standard permit is protective of public health and welfare.

Comment

Allied and WMTX commented that the commission should remove the setback requirement for stand-alone transfer stations. The commenters stated that modeling based on fugitive emissions similar to landfills is overly conservative, assuming that the volume of waste at a small landfill and a transfer station is comparable. The magnitude of waste at a small landfill is much greater. Allied provided additional data for modeling input. TxSWANA agreed that the modeling was overly conservative. TxSWANA sought clarification as the whether a "receptor" is an off-property receptor. Allied commented that transfer stations be included in the definition of "receptor" as a facility to which setback distances would apply.

Response

The commission has evaluated additional information from stakeholders regarding operational characteristics and limitations of transfer stations. Based on the evaluation, the commission is removing the setback requirements for stand-alone transfer stations storing 1,000 tons or more of waste overnight provided the facility is covered by a building with forced vertical ventilation. The information provided to the commission indicates that such a structure is an accepted industry standard and is in common use. The additional evaluation also indicated that smaller stations (those storing less than 1,000 tons) will not require the setback. Setback requirements apply to off-property receptors.

Comment

HSC also commented that the authorization period for air emissions from landfills should be shorter than ten years based on the constant rate of expansion of landfills.

Response

The commission has not changed the rule in response to these comments. Air emissions are evaluated for a ten-year period for a landfill based on its estimated waste acceptance rate representations, and anticipated growth. Modification or expansion of the landfill or any new facility located at the landfill beyond that anticipated during that ten-year period will require reevaluation under both the MSW permit and the air standard permit.

Comment

Allied and TxSWANA commented that the new Subchapter U should be modified to extend authorization to a landfill operation that would constitute a new major source or modification. They commented that landfill emissions occur 24 hours per day, and the industry requires a predictable and protective landfill permitting option. They stated that there is no legal impediment to such an extension. TxSWANA suggested that the commission create a separate authorizing mechanism for landfills that are major sources and that streamlining the authorization of major source landfills will help leverage beneficial gas-to-energy projects. HSC also supported the use of the NSR methods currently in Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to authorize major modifications resulting from landfill gas projects.

Response

The commission staff is currently investigating the legal aspects and effects on the state implementation plan of permitting major sources or projects which trigger PSD and NA reviews under standard permits. Current commission rules in §116.610(b), Applicability, subject major PSD and NA sources to case-by-case review under §116.610. This section is not open for amendment in this rulemaking, therefore, it is not possible to implement Allied's requested changes to this standard permit because this proposal had not been initially proposed by the commission and was not available for public comment. Standard permit users should be aware that if permitting of PSD/NA sources under standard permits is authorized in a future rulemaking, MSW landfills that are also Title V sources will not qualify for the Municipal Solid Waste Landfills General Operating Permit.

§330.987. Certification Requirements.

Comment

HCPHES commented that the certification requirements of §330.987(a) should be extended to Type IV landfills because these landfills should also meet the requirements of the standard permit.

Response

The commission has not changed the rule in response to these comments. Type IV landfills are not permitted to accept putrescible household waste; they accept construction and demolition materials only, which are not expected to result in NMOC emission rates that would require these sites to install a landfill gas collection system.

Comment

TxSWANA sought clarification that the provisions of §330.987 can be used to incorporate independently claimed PBRs and other standard permits into a Subchapter U authorization.

Response

The standard permit requires all independently claimed PBRs and standard permits outside of the Subchapter U authorization to be incorporated at the next certification renewal, amendment, or modification of this Subchapter U authorization as long as the changes authorized by the PBRs or standard permits do not cause the site to become ineligible for the standard permit. The PBR and standard permit emissions will be incorporated by adding their emissions to the current Subchapter U authorization. The new total emissions would then be required to meet all the conditions of this standard permit. Once incorporated into the Subchapter U authorization, the PBR and/or standard permit will be voided.

Comment

Allied, WMTX, and TxSWANA commented that the commission should provide the option in §330.987(d) to authorize air emissions from a landfill for the life of the landfill in parallel with the solid waste authorization if the landfill operator can submit information sufficient to demonstrate compliance with the standard permit over that period of time. Allied commented that this authorization will provide certainty to communities that rely on landfills for their waste disposal. They noted that the standard permit is structured to allow the growth of landfill operations with the incorporation of additional facilities.

Response

The commission has not changed the rule in response to these comments. TCAA, §382.055 requires that preconstruction permits be reviewed every ten years. The ten-year term of this standard permit is consistent with air permit renewal schedules throughout Chapter 116. The landfill owner or operator has the option to submit information for a period longer than ten years at the original certification that indicates the landfill will not trigger federal requirements, or for the entire life of the landfill. While the certification will expire after ten years, the owner or operator may renew the certification for an additional ten years by submitting a notice that the landfill conditions are consistent with information submitted at the original certification. No additional fees or technical data will be required. The notice will not only renew the certification but will attest that the conditions relating to the triggering of federal review have not changed.

When submitting landfill information covering a longer period than the ten years, if the landfill would require a GCCS under 40 CFR Part 60, Subpart WWW some time after the initial ten years, it will be necessary for the owner or operator to submit the GCCS design plan for approval with the initial certification. A landfill that triggers the 40 CFR Part 60, Subpart WWW GCCS requirement during the initial ten-year certification would also be required to submit the design plan with the initial certification.

Comment

Allied requested guidance or clarification regarding the nature of supporting information required by §330.987(d) to demonstrate "the basis and quantification of emission estimates" and what would be considered sufficient to demonstrate compliance.

Response

The commission expects the landfill owners and operators to use EPA technical reports, generally accepted engineering calculations and emission factors, the latest emission factors published by the EPA Guidance Document AP-42 along with any other EPA sanctioned modeling programs, including, but not limited to, LandGEM, ISC3, SCREEN3, etc., for determining emission estimates, and demonstrating compliance with the conditions of the subchapter. The commission is also developing guidance for ancillary facilities at landfill sites to provide typical emission factor information. No changes were made in response to these comments.

Comment

Allied requested that the commission add a provision to §330.987 allowing executive director review of certifications. The commenter requested language as currently used in §116.611(b) providing that construction can begin anytime after written notification from the executive director or 45 days after the executive director receives the certification, whichever occurs first.

Response

The certification requirement is intended to expedite landfill air emission authorization by eliminating the need for executive director review. The landfill owner or operator is ultimately responsible for compliance with all rules and regulations. Using the certification process, the 45-day period for executive director response does not apply. No changes were made in response to these comments.

Comment

Allied, NTWMD, TDS, and RMR supported the rule language in §330.987 that would require certification under the new standard permit within 180 days for modified facilities only and pointed out the inconsistency with the preamble which states that all landfills must re-certify within 180 days. They urged that unmodified landfills be allowed continued use of their existing authorizations until expiration. Certification would require reevaluation or an audit of their entire landfill operations. Allied further commented that the certification under Chapter 330 for existing landfills that have not been modified is burdensome, costly, and provides no additional benefit to human health or the environment.

Response

The commission has deleted the 180-day certification requirement from §330.987 and will rely on the effective date of this standard permit in §330.981 to establish a date by which modified landfills that do not continue to meet the requirements of §116.621 must be certified. Certification will also apply to landfills that require additional authorization for their support activities. The authorization of unmodified landfills will remain in effect until normal expiration. The commission has made the necessary change in the preamble.

Comment

Allied recommended changes to §330.987(e)(2) and (3) that would reference "initial construction of an MSW landfill" and submission of certifications by "the landfill owner operator" within 60 days of changes. The commenter also submitted recommended language for §330.987(f)(2)(A) that refers to "within one year of constructing new facilities or modifications" instead of the proposed "annually." For subsection (e)(2)(B), the commenter recommended language referring to "constructing new facilities or modification" instead of the proposed "changes." The commenter also suggested adding the clarification "greater than or equal to" when referring to 25 tons of any criteria pollutant in NA areas.

Response

The commission has changed the rule in response to these comments. The suggested language changes add greater precision to the rule language.

Comment

TxSWANA requested confirmation that applicants will have the option of certifying landfills and emissions associated with landfill gas projects with the initial certification, regardless of whether federal requirements, including those listed in 40 CFR Part 60, Subpart WWW would be triggered initially or during the life of the permit.

Response

TxSWANA is correct.

Comment

TxSWANA requested clarification regarding the applicability of §330.987(e) and (f) to landfills that have submitted certification information covering a greater than ten-year period of time. TxSWANA understood that no new certification information would be required unless there was a change in the landfill causing a change in categories as specified in §330.983(5). TxSWANA also sought clarification that the construction of new cells and gas collection systems would not trigger a need for a new certification if these operations were set forth in the original certification.

Response

Construction of new cells and gas collection systems does not constitute a modification as defined in §330.983(7). Additionally, should a landfill submit certification of information covering more than ten years, and the landfill grows, causing a change in category, without any modifications as defined in §330.983(7), then no change in the certification would be required if all the requirements under the higher category were evaluated for compliance at the time of the original certification.

Comment

Allied noted that the preamble, but not the rule, indicates that a gas control system design plan should be submitted if the landfill owner submits information covering a period longer than ten years. Allied stated that it is not possible to know how to design a system at initial certification if the system is not yet required. The commenter stated that submission of plans according to 40 CFR Part 60, Subpart WWW is sufficient and reasonable.

Response

The commission disagrees with the commenter. Based on projected growth of the landfill, available land, and established emission rates, the commission determined that it is possible to submit a reasonable design of a gas control system that would meet future needs.

The commission determined that the LandGEM landfill air emission model and the equations in 40 CFR Part 60, Subpart WWW can be used to predict when a GCCS is required and what the expected emissions will be. This should allow a design to be made. It would be necessary to submit the GCCS design plan only if the owner or operator of the site proposes to submit information for a period longer than ten years and 40 CFR Part 60, Subpart WWW triggers the requirement to install a GCCS during the period submitted.

§330.989. General Requirements.

Comment

HCPHES agreed with proposed language in §330.989(b).

Response

The comments are acknowledged. No changes were made in response to these comments.

§330.991. Technical and Operational Requirements for all Municipal Solid Waste Landfill Sites.

Comment

HCPHES agreed with proposed language in §330.991.

Response

The comments are acknowledged. No changes were made in response to these comments.

Comment

Allied commented that the applicability of Subpart WWW should be clarified in §330.991(a)(12)(A) by adding the phrase "as applicable" to indicate that the entirety of Subpart WWW may not apply to each flare.

Response

The commission agrees with Allied's comment and has added the language in §330.991(a)(12)(A).

Comment

TxSWANA requested that the commission clarify the restriction on the application of leachate and whether the 100,000-gallon limit in §330.991(a)(6)(F) applies to leachate application in bioreactors provided it is not surface application.

Response

The commission has removed the authorization for bioreactors from Chapter 330 due to concerns regarding design, operation, and conformance with the federal RCRA, Subtitle D program.

Comment

Allied commented that PM emissions for waste solidification/stabilization should apply at the property line consistent with the PM property line requirement in §330.991(d)(1).

Response

The commission has changed §330.991(a)(3)(B) in response to these comments so that both visible emission standards refer only to site-generated emissions.

Comment

TxSWANA requested clarification of the application of dust control to landfill cells versus the total excavated area. The rule language in §330.991(d)(3) appears to apply to all excavated areas while the preamble refers only to cells.

Response

The commission agrees with the comment and has added preamble language stating that all excavated areas are subject to dust control provisions.

Comment

Allied commented that the commission should use different authorization restrictions on misters such as setbacks, nozzle height, or product use rather than the restrictions in §106.261 or §106.262. The commenter stated that information on misters is being supplied to the commission for evaluation, which may show that the cited PBR is too restrictive. Allied further com-

mented that if proprietary information is required, an analysis may prove difficult or impossible.

Response

The commission has changed the rule in response to these comments. The commission received information from four manufacturers of deodorizing products representing the majority of suppliers to MSW landfills. The commission analyzed the product information for health effects, finding no adverse effects are expected on human health and the environment from these spray mist systems. As a result of this analysis, the commission has removed restrictions, other than visible emissions restrictions, on the use of spray mist systems.

Comment

Allied recommended removing the requirement for a separate gas collection system for bioreactors and stated that such a requirement has no environmental benefit.

Response

The commission has removed the authorization for bioreactors from Chapter 330 due to concerns regarding design, operation, and conformance with the federal RCRA, Subtitle D program.

Comment

Allied commented that the commission should remove the requirement in §330.991(f) requiring a gas collection system for landfill cells containing Class 1 industrial nonhazardous waste greater than 20% by weight or volume. The commenter stated that the Class 1 material is relatively inert and contains little material that generates air emissions. Additionally, because wells for the gas collection system would have to be drilled through overlying waste and a soil barrier to reach the Class 1 area allowing commingling of the wastes, Allied suggested allowing Class 1 waste in volumes greater than 20% before requiring the gas collection system.

Response

The commission has not changed the rule in response to these comments. The EPA default values for landfill gas emissions are based on co-disposal of industrial/commercial (Class 1) and household waste at a 20% mix limit with MSW. The commission could not demonstrate protectiveness for human health and the environment with Class 1 waste in excess of 20% unless the emissions were controlled by a gas collection system.

§330.993. Additional Requirements for Owners or Operators of Category 3 Municipal Solid Waste Landfills.

Comment

Allied commented that §330.993 should be modified or deleted to eliminate duplicate references to federal requirements. If the section cannot be deleted, Allied recommended a modification to reference 40 CFR Part 60, Subpart WWW generally rather than specific sections. Allied recommended that §330.995(c)(1) - (3) be deleted because they are redundant. Their subject matter of compliance with federal regulations is covered by the requirements of §330.989(a)(1).

Response

The commission has not changed the rule in response to these comments. The commission has included these sections as an aid to the landfill owners or operators who are not familiar with air regulations and to help expedite their certification process.

Subchapter Y: Medical Waste Management

§330.1205. Definitions.

Comment

APIC and DRMC supported the expanded geographical limits of "on-site" in §330.1205(b) and recommend that it be expanded to 95 miles. THA recommended that it be expanded to 100 miles. HCPHES commented that the 75 miles appears to be arbitrary, that it will be difficult to enforce, it will exempt generators from recordkeeping or manifesting, and that the method for determining the distance is not defined. Sharps stated that the definition of "on-site" is too broad and should be contiguous or adjacent to the point of waste generation. APIC and THA commented that a new definition should be added to allow facilities that are contiguous or in close proximity, but not under common ownership or control, to process their on-site medical waste at a facility operated for joint benefit. EHMS stated that the rule should provide a definition for the term "mobile medical waste treatment unit" to avoid such units from being permanently affixed at a hospital site and recommended that the rule also adopt an existing definition of a "hospital" to clarify the point of generation and ownership limitations of the generator.

Response

The commission has made no changes to the 75-mile radius, added a new definition of affiliated facility, and did not add a definition for the term "mobile medical waste treatment unit" to the rule in response to these comments. The commission believes that the 75-mile radius distance is adequate to allow medical waste generators in metropolitan areas an ability to manage and transport waste from their operations. The commission believes that it is reasonable to allow a hospital to assume responsibility for an integrated medical waste management unit within a contiguous health care complex and added a definition for an affiliated facility. The commission does not believe that the term "mobile" must be defined in Chapter 330 since the term is known in common usage. The term "hospital" has been defined, in response to comment, by reference to that term's usage by the DSHS. The 75-mile distance is measured as a straight line between the point of generation and receipt as opposed to the distance by road.

§330.1207. Generators of Medical Waste.

Comment

HCPHES commented that under §330.1207(b)(2), the exception for medical waste shipped via first class or priority mail means that there would be no signed receipts for investigators to review for these types of cases and therefore difficult to enforce. At a minimum, a return receipt for registered mail should be required if medical waste is shipped via first class or priority mail.

Response

The commission is not aware of any problems related to mailed shipments of medical waste that warrant additional requirements. The commission made no changes in response to this comment.

Comment

Sharps requested that sharps mailback containers be exempted from the Spanish labeling requirement of proposed §330.1207(c)(4). Sharps commented that the federal requirements only require the biohazard symbol with no Spanish warning labels and that states that have large Spanish-speaking

populations, such as California, Arizona, Florida, and New Mexico, also do not require labeling in Spanish on transport containers. Sharps concluded that not including Spanish wording on the mailback system would not present a hazard to the workers transporting these containers.

Response

The commission believes the labeling is appropriate regardless of the transporter and that the requirement does not conflict with federal labeling requirements. The commission has not revised the rule in response to these comments.

Comment

Stericycle requested that the commission add language to §330.1207(c)(9) that refers to the leakproof standard for sharps containers found in federal regulations, 49 CFR §173.24(f). The requested language is to clearly require that all sharps be transported in a sealed, leakproof manner. Stericycle further commented that the new language will remove the apparent option for sharps containers that may be leak resistant but not leakproof to be placed in a plastic bag. Stericycle expressed the belief that this is a uniform standard that does not impose any significant restraint on interstate commerce, and generators may easily comply with the standard.

Response

The commission concurs with the request and has changed §330.1207(c)(9) to require that any container that is not leakproof as defined in 49 CFR §173.24(f) be placed in a plastic bag described in §330.1207(c)(1) and then into a rigid container described in §330.1207(c)(2).

Comment

Stericycle commented that §330.1211(h)(3) should be revised to require that the transporter provide the generator documentation of the total weight of the containers within 45 days when scales are not available, and to make subsection (h)(3) consistent with requirements in §330.1211(g).

Response

The commission agrees with these comments and has added, to §330.1207(c)(5), that the generator provide the weight of the container and contents on the label affixed to a container of untreated medical waste.

§330.1209. Storage of Medical Waste.

Comment

Chambers suggested that the rule be revised to allow a treatment facility to request a waiver of the refrigeration requirement for putrescible or biohazardous medical waste, on a case-by-case basis.

Response

The regulations require treatment facilities to refrigerate putrescible or biohazardous medical waste stored for longer than 72 hours. If conditions require a longer period of waste storage, the commission believes that refrigeration is appropriate, and has not revised the rule in response to comment.

Comment

OPIC requested that the commission initiate a study on the requirements for refrigeration of medical waste to control and/or prevent the spread of infectious agents from medical waste prior to making a decision on the rules.

Response

The commission requested input on this topic and received no technical information that the unrefrigerated storage time should be less than 72 hours. Requiring refrigeration after 72 hours is reasonable to protect the public, so this provision is adopted as proposed.

Comment

HCPHES commented that §330.1209(b) should be revised to allow a maximum storage time of seven days, and that existing provisions for executive director authorization after 14 days should be retained. HCPHES also commented that the rule should provide a definition for the terms "medical waste collection station" and "mobile treatment unit," and that the registration by rule will not require notification to TCEQ and will make TCEQ and HCPHES monitoring of the operation difficult.

Response

If waste is refrigerated as required by regulation, the commission does not believe it necessary to put a time limit on storage. Because the term "mobile" is known in common usage, a definition has not been provided in Chapter 330 for a mobile treatment unit, nor has a separate definition been provided for a medical waste collection station, which is defined by the activities described in §330.1217. Though no public notice is required, a registration by rule will require the submittal of information on the operation at least 60 days prior to commencing operation under §330.9(m)(1). The rule has not been changed in response to these comments.

Comment

Sharps commented that sharps waste is not putrescible and therefore should not require refrigeration, and requested that the rule be revised to exclude sharps waste from the refrigeration storage requirements of §330.1209(b).

Response

The requirement that waste be stored at 45 degrees Fahrenheit relates to both putrescible and biohazardous untreated medical waste, making a blanket exemption for any medical waste stream inappropriate. The rule has not been changed in response to these comments.

§330.1219. Treatment and Disposal of Medical Waste.

Comment

APIC, DRMC, EMHS, and THA commented that §330.1219(b)(1) should be revised to allow the commingling of treated waste streams with routine MSW. APIC, EHMS, and THA stated that the proposed §330.1219(b)(4)(B) should be revised to remove the special waste designation for treated sharps placed in a sharps container. EHMS also requested that the rule be revised to remove labeling requirements and suggested language to make §330.1219(b)(4)(C) unnecessary. Stericycle requested that the rule be revised to remove requirements for the segregation of sharps from a commercial processing facility, to eliminate the risk to facility employees.

APIC, EHMS, and THA requested that §330.1219(b)(4)(D) be revised to clarify that sharps that have been treated and rendered unrecognizable by grinding or shredding can be commingled and disposed with routine MSW.

Several commenters expressed concern that the segregation and disposal of treated medical waste identified as a special waste, will be unnecessarily burdensome and costly to healthcare facilities. APIC and THA stated that the term "special characteristics or properties" is vague, making compliance or enforcement impossible. Micro-Waste requested that the applicability to special waste be clarified. APIC, DRMC, and THA stated that there is no scientific evidence that treated medical waste poses a greater risk than routine MSW, and requested that language which designates treated medical waste with special characteristics or properties as a special waste be removed. APIC and THA suggested that if retained, the definition be revised to provide for a "treatment certification statement" that would provide notice when treated medical waste with special characteristics or properties is delivered to the landfill. DMRC suggested that in lieu of the proposed rule, the addition of generator reporting and monitoring of the waste process could be added to existing requirements. Med-Shred suggested the rule also be revised to clarify that treated medical waste that no longer retains special characteristics may be disposed with routine MSW.

TORCH commented that not allowing treated medical waste to be disposed of with or as MSW could create problems for rural hospitals that would be both procedural and financial in nature. TORCH stated that the proposed changes would place an undue burden on more isolated facilities or those located in areas that are reluctant to deal with wastes other than routine MSW. TORCH commented that properly treated medical waste can be disposed of as normal waste without fear of infection or identification. Further, TORCH stated that mandating hospitals to segregate treated special waste would force already space- and cost-conscious rural hospitals to shift resources away from other initiatives. The rule might also require rural hospitals to move such waste greater distances to a landfill which would have the capacity to meet the new guidelines. TORCH requested that the commission provide any presented evidence that rendered former opinions about the safety of treated special waste invalid to assist TORCH in explaining the justification for these changes to organization members.

Response

The commission agrees with some of these comments, has removed the special labeling and segregation requirements for treated medical waste, and adopts new §330.1219(e) to allow treated medical waste to be managed as routine MSW with the condition that treated medical waste that contains whole, nonencapsulated hypodermic needles or syringes or intact red bags that are sent to a landfill for disposal shall be accompanied by a shipping document. This shipping document must include a statement that the shipment contains whole, nonencapsulated hypodermic needles or syringes or intact red bags, as applicable, and that the medical waste has been treated in accordance with 25 TAC §1.136, Approved Methods of Treatment and Disposition. The commission has deleted mention of special waste in response to these comments.

Comments Regarding the Estimated Fiscal Impact

Comment

BME commented that the commission did not perform a cost to benefit analysis for the revised well spacing requirement.

Response

The commission provided an estimate of the predicted costs associated with the revised well spacing requirement. The commission did not perform a cost to benefit analysis because this type of analysis is only required by Texas Government Code, §2001.0225 for a major environmental rule, as defined by this statute. As discussed in the preamble, this rulemaking does not meet the definition of a major environmental rule. No changes were made in response to these comments.

Comment

WMTX commented that the commission has significantly underestimated the potential cost of complying with the revised well spacing requirement. WMTX added that the commission's estimated cost to comply will result in a material, adverse impact on the MSW industry.

Response

The commission has revised the cost estimates based on the 600-foot groundwater monitoring well spacing requirement adopted in new §330.403(a)(2) that was increased from the proposed maximum 300-foot spacing. The commission has also revised the cost estimates based on the groundwater monitoring well system impacting a larger downgradient perimeter of the landfill unit. The cost is not expected to increase for new facilities, because the adopted provision is consistent with current practice for monitor well spacing. For existing facilities, assuming an average landfill size of 300 acres, eight new wells could be needed. The construction cost per monitor well is estimated to be $3,500, and annual sampling costs are estimated to be $2,000 per well. Based on these assumptions, a permittee could spend as much as $44,000 in the first year for construction and sampling to add additional monitor wells at an existing landfill. Sampling costs for the second through the fifth year of operation could total as much as $16,000. Based on these amounts, the commission does not expect the new requirement to result in an adverse impact to the MSW industry.

Comment

BME commented that the statement in the PUBLIC BENEFITS AND COSTS portion of the proposed preamble that the revised rules would be more easily understood is subjective and the statement that there would be increased compliance with the rules is speculation. BME also commented that there is no support for the statement that the rules would provide greater protection of the environment.

Response

The commission disagrees with these comments. Two of the primary purposes of this rule project are to reorganize the MSW regulations to centralize requirements for different MSW facilities in specific sections, and to restructure the rules away from a landfill-centered basis toward a more general MSW facility management basis. The commission expects these changes to increase the understandability of, and compliance with, the new regulations. The commission also expects that an increased understanding of the rules, along with new requirements, will result in greater environmental protection. No changes have been made in response to these comments.

Comment

BME commented that the cost associated with posting the application on the internet was not adequately described in the PUBLIC COSTS AND BENEFITS portion of the proposed preamble.

Response

The commission agrees that the PUBLIC COSTS AND BENEFITS portion of the preamble did not adequately describe the cost of posting the application on the internet. The commission does not expect the costs associated with posting the application on the internet to be excessive. The commission has determined that web-hosting services are available that provide 20 gigabytes of disk space and 500 gigabytes bandwidth for less than $50 a month. Using 11 kilobytes per page, the average 2,000-page application would create a 22 megabyte document as a PDF file. If the Web site has 50 visits per day, this document would require three gigabytes of bandwidth.

Comment

BME commented that the elimination of the agency's review of the ballast evaluation report, liner evaluation report, and soil boring plan would result in a cost savings to the state, but not to owners and operators.

Response

The commission agrees, in part, with these comments. The elimination of the agency's review of the ballast evaluation report and the liner evaluation report will result in a cost savings to the state. The cost savings to owners and operators was discussed in the fiscal note of the proposed preamble that specifically addresses the cost savings to state and local governments. As a result, the cost savings to other entities was not discussed. Although the ballast evaluation report and liner evaluation report must still be submitted to the commission, the elimination of the executive director's review of these reports may potentially reduce the costs incurred by owners and operators by eliminating the need to respond to issues raised during the review of these reports. In response to another comment, the commission decided not to eliminate the requirement for executive director review of the soil boring plan.

Comment

BME commented that the commission provided no details or argument as to how the rules would result in savings of $50,000 to $100,000 per application.

Response

The commission has removed the proposed PBR for Type IVAE landfills from this chapter. Owners and operators will continue to have to apply for permits for these landfills. Therefore, there will be no application preparation cost savings for these landfills.

Comments Regarding the Draft Regulatory Impact Analysis

Comment

HCPHES commented that the draft regulatory impact analysis states that the rules do not exceed federal regulations or express requirements of a delegation agreement; however, an additional separate component is that as an approved state, the state rules must be at least as stringent as the federal regulations. HCPHES stated that the Chapter 330 rules are not always the same or similar or as stringent as the federal regulations. HCPHES also expressed the belief that this rulemaking signifies a program modification and 40 CFR §239.12 requires that changes to the state's regulatory authority or guidance which were not a part of the state's initial application, but may have a significant impact on the adequacy of the state's permit program, must be reported to the regional administrator for review.

Response

The commission included provisions in the adopted rules to address United States Environmental Protection Agency input on the proposed rules, and the commission will comply with notice requirements in 40 CFR §239.12 for the adopted rules.

Comment

WMTX commented that the revised well spacing requirement constitutes a major environmental rule under Texas Government Code, §2001.0225, because it exceeds a federal requirement and because it will adversely impact the MSW industry.

Response

The commission disagrees with these comments. The commission recognizes that the revised well spacing requirement may result in increased costs for some existing MSW facilities; however, these costs are not anticipated to reach levels which would adversely impact the MSW industry in a material way. The costs are not expected to increase for new facilities, because the adopted provision is consistent with current practice for monitor well spacing. The costs associated with complying with the new requirement are estimated to be $44,000 for existing facilities. While this may be an increase over the cost to comply with the current well spacing requirement for existing landfills that do not comply with the 600-foot spacing requirement, it is not a significant cost when compared to the total cost of operating an existing landfill. Because the revised well spacing requirement is not anticipated to adversely impact the MSW industry, it does not meet the definition of a major environmental rule. The commission also disagrees with the comment that the revised well spacing requirement exceeds a federal standard. The federal regulations on monitor well spacing in 40 CFR §258.51(d) state that the number, spacing, and depth of monitor systems must be determined based on site-specific technical information. This requirement, is consistent with, and does not exceed, the federal requirement.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §§330.1, 330.3, 330.5, 330.7, 330.9, 330.11, 330.13, 330.15, 330.17, 330.19, 330.21, 330.23, 330.25

STATUTORY AUTHORITY

The amendment and new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted amendment and new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards;

§361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted amendment and new sections also implement Texas Water Code, §5.103, Rules.

§330.1. Purpose and Applicability.

(a) The regulations promulgated in this chapter cover aspects of municipal solid waste (MSW) management and air emissions from MSW landfills and transfer stations under the authority of the commission and are based primarily on the stated purpose of Texas Health and Safety Code, Chapter 361 and Chapter 382. The provisions of this chapter apply to any person as defined in §3.2 of this title (relating to Definitions) involved in any aspect of the management and control of MSW and MSW facilities including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person that by contract, agreement, or otherwise arranges to process, store, or dispose of, or arranges with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity. The comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) are effective 20 days after they are filed with the Office of the Secretary of State.

(1) Permits and registrations, issued by the commission and it predecessors, that existed before the 2006 Revisions became effective, remain valid until suspended or revoked except as expressly provided otherwise in this chapter. Facilities may operate under existing permits and registrations subject to: requirements in the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require revisions to existing authorizations; and those requirements mandated by the United States Environmental Protection Agency in 40 Code of Federal Regulations (CFR) Parts 257 and 258, as amended, which implement certain requirements of Resource Conservation and Recovery Act, Subtitle D. For those federally mandated requirements and the equivalent state requirements, the effective dates listed in 40 CFR Parts 257 and 258, as amended, shall apply. For those federally mandated requirements, the permittee is under an obligation to apply for a permit change in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the required standard. The application shall be submitted no later than six months from the effective date of the required standard.

(2) Applications for new permits and major amendments to existing permits that are administratively complete and registration applications for which the executive director has completed a technical review, as of the effective date of the 2006 Revisions, shall be considered under the former rules of this chapter unless the applicant elects otherwise. Existing authorizations are subject to the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require modifications of existing authorizations regardless of whether a major amendment is being considered for the same facility under the former rules. For new permits and major amendments to increase solid waste disposal capacity, only complete applications (Parts I - IV), which are submitted and declared administratively complete before the effective date of the 2006 Revisions, may be considered under existing Chapter 330 rules. Such applications are not subject to §305.127(4)(B) of this title (relating to Conditions to be Determined for Individual Permits) and the owner or operator must submit the modifications required by the 2006 Revisions within one year after the commission's decision on the application has become final and appealable, unless a longer period of time is specified in the rules.

(3) Authorizations, other than permits and registrations, that existed before the 2006 Revisions became effective shall comply with the 2006 Revisions within 120 days of the 2006 Revisions becoming effective unless expressly provided otherwise in this chapter. These authorizations include notifications, exemptions, permits by rule, and registrations by rule.

(4) Authorizations, other than permits and registrations, that had not been claimed or did not exist before the 2006 Revisions became effective shall comply with the 2006 Revisions.

(5) Applications for modifications or for amendments that do not increase solid waste disposal capacity that are filed before the 2006 Revisions become effective, or filed within 180 days after the 2006 Revisions become effective, are subject to the former rules. Such applications are not subject to §305.127(4)(B) of this title, and the owner or operator must submit the modifications required by the 2006 Revisions within 180 days after the effective date of the 2006 Revisions, unless a longer period of time is specified in the rules.

(6) Owners or operators of medical waste mobile treatment units, operating under an existing authorization may continue operating if they file a timely notice of intent to operate under a registration by rule in accordance with §330.9(m) of this title (relating to Registration Required).

(b) The commission at its discretion, may include one or more different types of units in a single permit if the units are located at the same facility with the exception of a facility authorized by an MSW permit by rule. Persons shall seek separate authorizations at a facility that qualifies for an MSW permit by rule.

(c) This chapter does not apply to any person that prepares sewage sludge or domestic septage, fires sewage sludge in a sewage sludge incinerator, applies sewage sludge or domestic septage to the land, or to the owner/operator of a surface disposal site as applicable under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); to sewage sludge or domestic septage applied to the land or placed on a surface disposal site, to sewage sludge fired in a sewage sludge incinerator, to land where sewage sludge or domestic septage is applied to a surface disposal site or to a sewage sludge incinerator as applicable under Chapter 312 of this title; any person that transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste; to any person that applies water treatment sludge for disposal in a land application unit, as defined in §312.121 of this title (relating to Purpose, Scope, and Standards) to water treatment sludge that is disposed of in a land application unit, as defined in §312.121 of this title. Persons managing such wastes shall comply with the requirements of Chapter 312 of this title.

(d) This chapter does not apply to any person that composts MSW in accordance with the requirements of Chapter 332 of this title (relating to Composting), except for those persons that must apply for a permit in accordance with §332.3(a) of this title (relating to Applicability). Those persons that must submit a permit application for a compost operation shall follow the applicable requirements of Subchapter B of this chapter (relating to Permit and Registration Application Procedures).

§330.3. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. The following words and

terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) 100-year flood--A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(2) Active disposal area--All landfill working faces and areas covered with daily and alternative daily cover.

(3) Active life--The period of operation beginning with the initial receipt of solid waste and ending at certification/completion of closure activities in accordance with §§330.451 - 330.459 of this title (relating to Closure and Post-Closure).

(4) Active portion--That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.451 - 330.459 of this title (relating to Closure and Post-Closure).

(5) Airport--A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(6) Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste from its point of generation to a storage or processing tank(s), between solid waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(7) Animal crematory--A facility for the incineration of animal remains that meets the following criteria:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(8) Aquifer--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(9) Areas susceptible to mass movements--Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the municipal solid waste landfill unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

(10) Asbestos-containing materials--Include the following.

(A) Category I nonfriable asbestos-containing material means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix A, Subpart F, 40 Code of Federal Regulations (CFR) Part 763, §1, Polarized Light Microscopy.

(B) Category II nonfriable asbestos-containing material means any material, excluding Category I nonfriable asbestos-containing material, containing more than 1.0% asbestos as determined using the methods specified in Appendix A, Subpart F, 40 CFR Part 763, §1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(C) Friable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(D) Nonfriable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(11) ASTM--The American Society for Testing and Materials.

(12) Battery--An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:

(A) primary batteries (dry cells);

(B) storage or secondary batteries;

(C) nuclear and solar cells or energy converters; and

(D) fuel cells.

(13) Battery acid (also known as electrolyte acid)--A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

(14) Battery retailer--A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

(15) Battery wholesaler--A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

(16) Bird hazard--An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

(17) Boiler--An enclosed device using controlled flame combustion and having the following characteristics.

(A) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases.

(B) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units.

(C) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel.

(D) The unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps.

(18) Brush--Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

(19) Buffer zone--A zone free of municipal solid waste processing and disposal activities within and adjacent to the facility boundary on property owned or controlled by the owner or operator.

(20) Citizens' collection station--A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles), except that in small communities where regular collections are not available, small quantities of commercial waste may be deposited by the generator of the waste. The facility may consist of one or more storage containers, bins, or trailers.

(21) Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes that because of its concentration, or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(22) Class 2 wastes--Any individual solid waste or combination of industrial solid waste that are not described as Hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(23) Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(24) Collection--The act of removing solid waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

(25) Collection system--The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment, and management; and operating procedures. Systems are classified as municipal, contractor, or private.

(26) Commence physical construction--The initiation of physical on-site construction on a site for which an application to authorize a municipal solid waste management unit is pending, the construction of which requires approval of the commission. Construction of actual waste management units and necessary appurtenances requires approval of the commission, but other features not specific to waste management are allowed without commission approval.

(27) Commercial solid waste--All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(28) Compacted waste--Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(29) Composite liner--A liner system consisting of two components: the upper component must consist of a minimum 30-mil geomembrane liner or minimum 60-mil high-density polyethylene, and the lower component must consist of at least a two-foot layer of re-compacted soil deposited in lifts with a hydraulic conductivity of no more than 1×10^{-7} centimeters/second. The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component.

(30) Compost--The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(31) Composting--The controlled biological decomposition of organic materials through microbial activity.

(32) Conditionally exempt small-quantity generator--A person that generates no more than 220 pounds of hazardous waste in a calendar month.

(33) Construction or demolition waste--Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(34) Container--Any portable device in which a material is stored, transported, or processed.

(35) Contaminate--To alter the chemical, physical, biological, or radiological integrity of ground or surface water by man-made or man-induced means.

(36) Contaminated water--Leachate, gas condensate, or water that has come into contact with waste.

(37) Controlled burning--The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

(38) Discard--To abandon a material and not use, re-use, reclaim, or recycle it. A material is abandoned by being disposed of; burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

(39) Discharge--Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

(40) Discharge of dredged material--Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

(41) Discharge of fill material--The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

(42) Discharge of pollutant--Any addition of any pollutant to navigable waters from any point source or any addition of any pol-

lutant to the waters of the contiguous zone or the ocean from any point source.

(43) Displacement--The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

(44) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(45) Dredged material--Material that is excavated or dredged from waters of the United States.

(46) Drinking-water intake--The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

(47) Elements of nature--Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

(48) Endangered or threatened species--Any species listed as such under the Federal Endangered Species Act, §4, 16 United States Code, §1536, as amended or under the Texas Endangered Species Act.

(49) Essentially insoluble--Any material that, if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 Code of Federal Regulations (CFR) Part 141, Subparts B and G, and 40 CFR Part 143 for total dissolved solids.

(50) Existing municipal solid waste landfill unit--Any municipal solid waste landfill unit that received solid waste as of October 9, 1993.

(51) Experimental project--Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commission approval.

(52) Facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

(53) Fault--A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

(54) Fill material--Any material used for the primary purpose of filling an excavation.

(55) Floodplain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(56) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(57) Gas condensate--The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

(58) Generator--Any person, by site or location, that produces solid waste to be shipped to any other person, or whose act or process produces a solid waste or first causes it to become regulated.

(59) Grease trap waste--Material collected in and from a grease interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from dewatering processes.

(60) Grit trap waste--Grit trap waste includes waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments.

(61) Groundwater--Water below the land surface in a zone of saturation.

(62) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 *et seq.*, as amended.

(63) Holocene--The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

(64) Household waste--Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include brush.

(65) Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace, as defined in §335.1 of this title (relating to Definitions); or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(66) Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(67) Inert material--A natural or man-made nonputrescible, nonhazardous material that is essentially insoluble, usually including, but not limited to, soil, dirt, clay, sand, gravel, brick, glass, concrete with reinforcing steel, and rock.

(68) Infrared incinerator--Any enclosed device that uses electric-powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and is not listed as an industrial furnace as defined in §335.1 of this title (relating to Definitions).

(69) Injection well--A well into which fluids are injected.

(70) In situ--In natural or original position.

(71) Karst terrain--An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(72) Lateral expansion--A horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

(73) Land application of solid waste--The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

(74) Land treatment unit--A solid waste management unit at which solid waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such units are disposal units if the waste will remain after closure.

(75) Landfill--A solid waste management unit where solid waste is placed in or on land and which is not a pile, a land treatment unit, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(76) Landfill cell--A discrete area of a landfill.

(77) Landfill mining--The physical procedures associated with the excavation of buried municipal solid waste and processing of the material to recover material for beneficial use.

(78) Leachate--A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(79) Lead acid battery--A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

(80) License--

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(81) Liquid waste--Any waste material that is determined to contain "free liquids" as defined by United States Environmental Protection Agency (EPA) Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(82) Litter--Rubbish and putrescible waste.

(83) Low volume transfer station--A transfer station used for the storage of collected household waste limited to a total storage capacity of 40 cubic yards located in an unincorporated area that is not within the extraterritorial jurisdiction of a city.

(84) Lower explosive limit--The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(85) Medical waste--Treated and untreated special waste from health care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions) from the sources specified in 25 TAC §1.134 (relating to Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. Health care-related facilities do not include:

(A) single or multi-family dwellings; and

(B) hotels, motels, or other establishments that provide lodging and related services for the public.

(86) Monofill--A landfill or landfill cell into which only one type of waste is placed.

(87) Municipal hazardous waste--Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, United States Environmental Protection Agency.

(88) Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(89) Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(90) Municipal solid waste landfill unit--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste (MSW) landfill unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSW landfill unit may be a new MSW landfill unit, an existing MSW landfill unit, a vertical expansion, or a lateral expansion.

(91) New facility--A municipal solid waste facility that has not begun construction.

(92) Nonpoint source--Any origin from which pollutants emanate in an unconfined and unchanneled manner, including, but not limited to, surface runoff and leachate seeps.

(93) Non-regulated asbestos-containing material--Non-regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(94) Notification--The act of filing information with the commission for specific solid waste management activities that do not require a permit or a registration, as determined by this chapter.

(95) Nuisance--Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare. A nuisance is further set forth in Texas Health and Safety Code, Chapters 341 and 382; Texas Water Code, Chapter 26; and any other applicable regulation or statute.

(96) Open burning--The combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(97) Operate--To conduct, work, run, manage, or control.

(98) Operating hours--The hours when the facility is open to receive waste, operate heavy equipment, and transport materials on- or off-site.

(99) Operating record--All plans, submittals, and correspondence for a municipal solid waste facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(100) Operation--A municipal solid waste (MSW) site or facility is considered to be in operation from the date that solid waste is first received or deposited at the MSW site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(101) Operator--The person(s) responsible for operating the facility or part of a facility.

(102) Owner--The person that owns a facility or part of a facility.

(103) Permitted landfill--Any type of municipal solid waste landfill that received a permit from the State of Texas to operate and has not completed post-closure operations.

(104) Physical construction--The first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, the laying of underground pipework, or any work beyond the stage of excavation. Physical construction does not include land preparation, such as clearing, grading, excavating, and filling; nor does it include the installation of roads and/or walkways. Physical construction includes issuance of a building or other construction permit, provided that permanent construction commences within 180 days of the date that the building permit was issued.

(105) Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and not listed as an industrial furnace as defined by §335.1 of this title (relating to Definitions).

(106) Point of compliance--A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the facility.

(107) Point source--Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(108) Pollutant--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(109) Pollution--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(110) Polychlorinated biphenyl (PCB)--Any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contains such substance.

(111) Polychlorinated biphenyl (PCB) waste(s)--Those PCBs and PCB items that are subject to the disposal requirements of 40 Code of Federal Regulations (CFR) Part 761. Substances that are regulated by 40 CFR Part 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(112) Poor foundation conditions--Areas where features exist, indicating that a natural or man-induced event may result in inadequate foundation support for the structural components of a municipal solid waste landfill unit.

(113) Population equivalent--The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards.

(114) Post-consumer waste--A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

(115) Premises--A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(116) Process to further reduce pathogens--The process to further reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(117) Processing--Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of waste, designed to change the physical, chemical, or biological character or composition of any waste to neutralize such waste, or to recover energy or material from the waste, or render the waste safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume.

(118) Public highway--The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(119) Putrescible waste--Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that are capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or are capable of providing food for or attracting birds, animals, and disease vectors.

(120) Qualified groundwater scientist--A licensed geoscientist or licensed engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(121) Radioactive waste--Waste that requires specific licensing under 25 TAC Chapter 289 (relating to Radiation Control), and the rules adopted by the commission under the Texas Health and Safety Code.

(122) Recyclable material--A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be

produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(123) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

(124) Refuse--Same as rubbish.

(125) Registration--The act of filing information with the commission for review and approval for specific solid waste management activities that do not require a permit, as determined by this chapter.

(126) Regulated asbestos-containing material--Regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61, as amended, includes: friable asbestos material, Category I nonfriable asbestos-containing material that has become friable; Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(127) Regulated hazardous waste--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

(128) Resource recovery--The recovery of material or energy from solid waste.

(129) Resource recovery facility--A solid waste processing facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(130) Rubbish--Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(131) Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(132) Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(133) Salvaging--The controlled removal of waste materials for utilization, recycling, or sale.

(134) Saturated zone--That part of the earth's crust in which all voids are filled with water.

(135) Scavenging--The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(136) Scrap tire--Any tire that can no longer be used for its original intended purpose.

(137) Seasonal high water level--The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a facility.

(138) Septage--The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(139) Site--Same as facility.

(140) Site development plan--A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(141) Site operating plan--A document, prepared by the design engineer in collaboration with the facility operator, that provides general instruction to facility management and operating personnel throughout the operating life of the facility in a manner consistent with the engineer's design and the commission's regulations to protect human health and the environment and prevent nuisances.

(142) Site operator--The holder of, or the applicant for, an authorization (or license) for a municipal solid waste facility.

(143) Sludge--Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(144) Small municipal solid waste landfill--A municipal solid waste landfill unit (Type IAE) at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average and/or a Type IVAE landfill unit at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average. A Type IAE landfill permit may include additional authorization for a separate Type IVAE landfill unit. If a permit contains dual authorization for Type IAE and Type IVAE landfill units, the permit must designate separate areas for the units and where all disposal cells will be located within each unit.

(145) Solid waste--Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.*).

(146) Solid waste management unit--A landfill, surface impoundment, waste pile, furnace, incinerator, kiln, injection well, container, drum, salt dome waste containment cavern, land treatment unit, tank, container storage area, or any other structure, vessel, appurtenance, or other improvement on land used to manage solid waste.

(147) Source-separated recyclable material--Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste (MSW), or transported in the same vehicle as MSW, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(148) Special waste--Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household Materials Which Could Be Classified as Hazardous Wastes);

(B) Class 1 industrial nonhazardous waste;

(C) untreated medical waste;

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices);

(O) used oil;

(P) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;

(Q) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(R) lead acid storage batteries; and

(S) used-oil filters from internal combustion engines.

(149) Stabilized sludges--Those sludges processed to significantly reduce pathogens, by processes specified in 40 Code of Federal Regulations Part 257, Appendix II.

(150) Storage--The keeping, holding, accumulating, or aggregating of solid waste for a temporary period, at the end of which the solid waste is processed, disposed, or stored elsewhere.

(A) Examples of storage facilities are collection points for:

(i) only nonputrescible source-separated recyclable material;

(ii) consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks; and

(iii) accumulation of used or scrap tires prior to transportation to a processing or disposal facility.

(B) Storage includes operation of pre-collection or post-collection as follows:

(i) pre-collection--that storage by the generator, normally on his premises, prior to initial collection; or

(ii) post-collection--that storage by a transporter or processor, at a processing facility, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(151) Storage battery--A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte

used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(152) Structural components--Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the municipal solid waste landfill that is necessary for protection of human health and the environment.

(153) Surface impoundment--A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, and lagoons.

(154) Surface water--Surface water as included in water in the state.

(155) Tank--A stationary device, designed to contain an accumulation of solid waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

(156) Tank system--A solid waste storage or processing tank and its associated ancillary equipment and containment system.

(157) Transfer station--A facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(158) Transportation unit--A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

(159) Transporter--A person that collects, conveys, or transports solid waste; does not include a person transporting his or her household waste.

(160) Trash--Same as Rubbish.

(161) Treatment--Same as Processing.

(162) Triple rinse--To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

(163) Uncompacted waste--Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(164) Unified soil classification system--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(165) Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule):

(A) batteries, as described in 40 Code of Federal Regulations (CFR) §273.2;

(B) pesticides, as described in 40 CFR §273.3;

(C) thermostats, as described in 40 CFR §273.4;

(D) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

(E) lamps, as described in 40 CFR §273.5.

(166) Unloading areas--Areas designated for unloading, including all working faces, active disposal areas, storage areas, and other processing areas.

(167) Unstable area--A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(168) Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(169) Vector--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(170) Washout--The carrying away of solid waste by waters.

(171) Waste acceptance hours--Those hours when waste is received from off-site.

(172) Waste management unit boundary--A vertical surface located at the perimeter of the unit. This vertical surface extends down into the uppermost aquifer.

(173) Waste-separation/intermediate-processing center--A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.

(174) Waste-separation/recycling facility--A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

(175) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(176) Water table--The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

(177) Waters of the United States--All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes;

from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

(178) Wetlands--As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(179) White goods--Discarded large household appliances such as refrigerators, stoves, washing machines, or dishwashers.

(180) Working face--Areas in a landfill where waste has been deposited for disposal but has not been covered.

(181) Yard waste--Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

§330.5. Classification of Municipal Solid Waste Facilities.

(a) The commission has classified all municipal solid waste (MSW) facilities according to the method of processing or disposal of MSW. Subject to the limitations in §§330.15, 330.171, and 330.173 of this title (relating to General Prohibitions; Disposal of Special Wastes; and Disposal of Industrial Wastes), and with the written approval of the executive director, Type I, IV, V, and VI MSW facilities may also receive special wastes, including Class 1 industrial solid waste and hazardous waste from conditionally exempt small quantity generators, if properly handled and safeguarded in the facility.

(1) MSW facility--Type I. A Type I landfill unit is the standard landfill for the disposal of MSW. The commission may authorize the designation of special-use areas for processing, storage, and disposal or any other functions involving solid waste. Except as allowed in subsections (b) - (e) of this section, owners or operators shall follow the permit application requirements prescribed in Subchapter B of this chapter (relating to Permit and Registration Application Procedures) and the minimum design and operational requirements of Subchapter D of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities); Subchapter F of this chapter (relating to Analytical Quality Assurance and Quality Control); Subchapter G of this chapter (relating to Surface Water Drainage); Subchapter H of this chapter (relating to Liner System Design and Operation); Subchapter I of this chapter (relating to Landfill Gas Management); Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action); Subchapter K of this chapter (relating to Closure and Post-Closure); Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates); Subchapter M of this chapter (relating to Location Restrictions); Subchapter T of this chapter (relating to Use of Land Over Closed Municipal Solid Waste Landfills); and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). Those landfill units meeting the requirements of subsection (b) of this section shall be referred to as Type IAE landfill units. Type IAE landfill units are authorized to accept the same types of waste as Type I landfill units subject to the limitations in §330.173 of this title, and are exempt from Subchapters H and J of this chapter. Owners or operators of Type I landfill facilities that are authorized to operate a Type IV cell or trench shall operate the cell or trench in accordance with paragraph (2) of this subsection.

(2) MSW facility--Type IV. A Type IV landfill unit may only accept brush, construction, or demolition waste, and/or rubbish. A Type IV landfill unit may not accept putrescible wastes, conditionally exempt small-quantity generator waste, or household wastes. Except as allowed in subsection (b) of this section, owners or operators shall follow the permit application requirements prescribed in Subchapter B of this chapter and the minimum design and operational standards prescribed in Subchapters D, F, and G of this chapter; §§330.331(d), 330.335, 330.337, 330.339, and 330.341 of this title (relating to Liner System Design and Operation); §330.417 of this title (relating to Groundwater Monitoring at Type IV Landfills); §§330.453, 330.463(a), 330.465, and 330.467 of this title (relating to Closure and Post-Closure); Subchapter M of this chapter; Subchapter N of this chapter (relating to Landfill Mining); and Chapter 37, Subchapter R of this title. Those landfill units meeting the requirements of subsection (b) of this section shall be referred to as Type IVAE landfill units. Type IVAE landfill units are authorized to accept the same types of waste as Type IV landfill units and are exempt from Subchapters H and J of this chapter.

(3) MSW facility--Type V. Separate solid waste processing facilities are classified as Type V. These facilities include processing plants that transfer, incinerate, shred, grind, bale, salvage, separate, dewater, reclaim, and/or provide other storage or processing of solid waste. Owners or operators shall follow the minimum design and operational requirements prescribed in Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units); Subchapter F of this chapter; Subchapter G of this chapter; Subchapter H of this chapter, if required; Subchapter K of this chapter; Subchapter L of this chapter, if financial assurance is required; Subchapter M of this chapter; and Chapter 37, Subchapter R of this title, except that owners and operators of recycling facilities who store combustible material are required to comply with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities). Groundwater monitoring may be required by the executive director and shall be maintained in accordance with the requirements of Subchapter J of this chapter.

(4) MSW facility--Type VI. A Type VI facility or operation is a facility using a new or unproven method of managing or utilizing MSW, including resource and energy recovery projects for processes that are not currently in use in Texas. The commission may limit the size of these facilities until the method is proven. The minimum operational standards are prescribed in Subchapter E of this chapter.

(5) MSW facility--Type VII. A Type VII facility or operation is a facility for the land management of sludges and/or similar wastes. Operational standards, depending on the particular waste, facility purpose, and method of operation (land application for beneficial use, land disposal to include landfilling and land treatment, etc.) are contained in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(6) MSW facility--Type VIII. Facilities for the management of used or scrap tires are classified as Type VIII. Standards are prescribed in Chapter 328, Subchapter F of this title (relating to Management of Used or Scrap Tires).

(7) MSW facility--Type IX. A Type IX facility is an energy, material, gas recovery for beneficial use, or landfill mining facility located within or adjacent to a closed disposal facility, an inactive portion of a disposal facility, or an active disposal facility, used for extracting materials for energy and material recovery or for gas recovery for beneficial use. Registration by rule requirements for facilities that recover landfill gas for beneficial use are prescribed in §330.9(h) of this title (relating to Registration Required). Owners or operators of other Type IX facilities shall follow the registration application requirements prescribed in Subchapter B of this chapter. All owners and operators shall follow the minimum design and operational requirements of Subchapter E of this chapter; §330.459 of this title (relating to Closure Requirements for Municipal Solid Waste Storage and Processing Units); §330.461 of this title (relating to Certification of Final Facility Closure); §330.505 of this title (relating to Closure Cost Esti-

mates for Storage and Processing Units); and Chapter 37, Subchapter R of this title. Waste mining activities shall also follow the minimum design and operation requirements of §330.149 of this title (relating to Odor Management Plan); §330.151 of this title (relating to Disease Vector Control); §330.165 of this title (relating to Landfill Cover); and §330.167 of this title (relating to Ponded Water). Owners or operators of an MSW landfill facility applying for a non-beneficial use gas control system for any area within the facility's permit boundary shall apply for a permit modification under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Type IX facility permits and registrations previously issued for the recovery and beneficial use of landfill gas are considered to remain valid under applicable permit provisions until amended, modified, or revoked by the commission. The owner or operator must submit all information necessary to complete the air quality review as prescribed by the commission and be approved by the executive director prior to the Type IX registration by rule becoming effective.

(b) Owners or operators of a Type IAE or Type IVAE landfill facility may qualify for an arid exemption, as follows.

(1) Owners or operators of new, existing, and lateral expansions of Type IAE or Type IVAE landfill units may qualify for an arid exemption and be exempt from Subchapters H and J of this chapter, provided all of the following conditions are met:

(A) the facility disposes less than 20 tons per day based on an annual average of authorized waste in a Type IAE landfill unit and/or less than 20 tons per day based on an annual average of authorized waste in a Type IVAE landfill unit for a total waste acceptance rate less than 40 tons per day for the facility considering all waste streams based on an annual average;

(B) there is no evidence of existing groundwater contamination from the facility;

(C) the facility serves a community that has no practicable waste management alternative; and

(D) the facility is located in an area that receives less than or equal to 25 inches of annual average precipitation based on precipitation data from the nearest official precipitation recording station for the most recent 30-year reporting period.

(2) Requests for exemptions under §330.63(d)(5) of this title (relating to Contents of Part III of the Application) may be approved administratively by the executive director, upon demonstration of compliance with all applicable criteria. The executive director may deny an exemption request if the available information indicates that granting the exemption could result in a substantial threat of groundwater contamination. Existing Type IAE landfill permits, which include a 20 tons per day waste disposal limit, may be revised via a major amendment to allow for disposal of an additional less than 20 tons of authorized waste in a Type IVAE landfill unit located in a separate area of the same facility. Existing Type IAE landfill permits, which do not include a waste disposal limit or include a waste disposal limit in excess of limits allowed for Type IAE landfill units, may be modified consistent with the restrictions for small MSW landfills. Within 180 days of the effective date of the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions), owners and operators of such a permit shall comply with the waste acceptance rate limit for a Type IAE landfill unit or apply to modify such permit to include a Type IVAE landfill unit located in a separate area of the facility. Such permits remain valid until a final decision is made on the modification application. Such a modification must be processed in accordance with §305.70(l) of this title as a modification subject to public notice. Such a modification application must be submitted in conjunction with a corresponding application to modify the revised estimated waste acceptance rate under §330.125(h) of this title (relating to Recordkeeping Requirements).

(3) Owners or operators may appeal denials of a request for exemption to the commission for decision.

(4) If the owner or operator of a new, existing, or lateral expansion of a Type IAE or Type IVAE landfill facility who has previously asserted eligibility for the arid exemption has knowledge or becomes aware of groundwater contamination from the facility within a one-mile radius of the unit, the facility no longer meets the definition of a Type IAE or Type IVAE landfill facility, the waste reduction program is ineffective (based upon an evaluation of trends established after a minimum period of a year), or a practicable alternative becomes available, the owner or operator shall notify in writing the executive director of such condition(s) and thereafter comply with Subchapter B, Subchapter H, and Subchapter J of this chapter on a schedule specified by the executive director.

(5) The executive director may consider the economic investment made by the owner or operator in establishing the schedule for compliance.

(6) The minimum time allowed for compliance necessitated by loss of Type IAE or Type IVAE landfill facility status or availability of a practicable alternative shall be 18 months.

(7) A Type IAE or Type IVAE landfill facility that meets the requirements of this subsection shall maintain the integrity of any existing on-site groundwater monitor wells and make them available to the executive director for the collection of groundwater samples.

(c) For MSW landfills that stopped receiving waste before October 9, 1991, and unauthorized MSW sites, the closure provisions of §330.453 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites) apply. If not previously submitted, owners or operators shall submit a closure report that documents that MSW landfill units or unauthorized MSW sites, or portions thereof, have received final cover.

(d) MSW landfill units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are subject to the final cover requirements specified in §330.455 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993). The final cover must be installed and certified in accordance with the requirements contained in §§330.451, 330.453, 330.455, and 330.457 of this title (relating to Closure and Post-Closure). Owners or operators of MSW landfill units described in this subsection that fail to complete cover installation and certification within the time limits specified in Subchapter L of this chapter will be subject to all the requirements of these regulations.

(e) All MSW landfill units that receive waste on or after October 9, 1993, must comply with all requirements of these regulations, unless otherwise specified.

§330.7. Permit Required.

(a) Except as provided in §§330.9, 330.11, 330.13, or 330.25 of this title (relating to Registration Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; and Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or op-

erator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed. No person may commence physical construction of a new municipal solid waste (MSW) management facility, a vertical expansion, or a lateral expansion without first having submitted a permit application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Application Procedures) and received a permit from the commission, except as provided otherwise in this section.

(b) A separate permit is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person that intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(c) Permits by rule may be granted for persons that compact or transport waste in enclosed containers or enclosed transportation units to a Type IV facility.

(1) A permit by rule is granted for a generator operating a stationary compactor that is only used to compact waste to be disposed of at a Type IV landfill, if all of the following conditions are met.

(A) The generator submits the following information and any requested additional information on forms provided by the executive director:

(i) generator contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(ii) contract renewal date, if applicable;

(iii) rated compaction capability in pounds per cubic yard;

(iv) container size;

(v) description of waste stream to enter compactor;

(vi) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person; and

(vii) a certification from the generator that states the following: I, (name) _____, (title) _____ of (company name) _____, located at (street address) _____ in (city) _____, certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

(B) The generator submits a $75 fee along with the claim for the permit by rule.

(C) The generator complies with the operational requirements of §330.215 of this title (relating to Requirements for Stationary Compactors).

(D) A stationary compactor permit by rule expires after one year. The generator must submit an annual renewal fee in the amount of $75. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the generator claims a new or renewed permit by rule.

(2) A permit by rule is granted for transporters using enclosed containers or enclosed vehicles to collect and transport brush, construction or demolition wastes, and rubbish along special collection routes to MSW Type IV landfill facilities if all of the following conditions are met.

(A) The owner or operator seeking a special collection route permit by rule submits to the executive director the following information and any requested additional information on forms provided by the executive director:

(i) name of owner and operator, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number;

(ii) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(iii) information on each transportation unit, including, at a minimum, license number, vehicle identification number, year model, make, capacity in cubic yards, and rated compaction capability in pounds per cubic yard;

(iv) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the MSW Type IV landfill;

(v) a description of the wastes to be transported;

(vi) an alternative contingency disposal plan to include alternate trucks to be used or alternative disposal facilities; and

(vii) a signed and notarized certification from the owner or operator that states the following: I, (name) _____, (title) _____, of _____ operating in _____ County, certify that the contents of the vehicles described above will be free of putrescible, household, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The transporter submits a $100 per vehicle fee along with the claim for a permit by rule.

(C) The transporter documents each load delivered with a trip ticket form provided by the executive director, and provides the trip ticket to the landfill operator prior to discharging the load.

(D) A special collection route permit by rule expires after one year. The owner or operator must submit an annual renewal fee in the amount of $100 per vehicle. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the owner or operator claims a new or renewed permit by rule.

(E) This paragraph does not apply if the waste load is from a single collection point that is a stationary compactor authorized in accordance with paragraph (1) of this subsection.

(3) Revision requirements for stationary compactor permits or special collection route permits by rule identified in paragraphs (1) and (2) of this subsection are as follows.

(A) An update must be submitted if any information within the original permit by rule submittal changes.

(B) A submittal to update an existing permit by rule must include all of the same documentation required for an original permit by rule submittal.

(d) A major permit amendment, as defined by §305.62 of this title (relating to Amendment), is required to reopen a Type I, Type IAE, Type IV, or Type IVAE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable requirements of the Resource Conservation and Recovery Act, Subtitle

D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.57(a) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities). This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(e) A permit by rule is granted for an animal crematory that meets the following criteria. For facilities that do not meet all the requirements of this subsection, the owner or operator shall submit a permit application under §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title and obtain a permit. To qualify for a permit by rule under this subsection, the following requirements must be met.

(1) General prohibitions. An animal crematory facility shall comply with §330.15(a) of this title (relating to General Prohibitions).

(2) Incineration limits. Incineration of carcasses shall be limited to the conditions specified in §106.494 of this title (relating to Pathological Waste Incinerators). The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(3) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(4) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title.

(5) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(6) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(7) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or medical waste are prohibited.

(8) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(9) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(10) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals that may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(11) Buffer zone. An animal crematory, including unloading and storage areas, constructed after March 2, 2003, must be at least 50 feet from the property boundary of the facility.

(12) Operating hours. A crematory shall operate within the time frames allowed by §111.129 of this title (relating to Operating Requirements).

(13) Documentation. The operator of an animal crematory shall document the carcasses' weight, date and time when carcasses are received, and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(14) Breakdown. The facility is subject to §330.241 of this title (relating to Overloading and Breakdown).

(15) Records management. The owner or operator must retain records as follows:

(A) maintain a copy of all requirements of this subsection that apply to the facility;

(B) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this subsection;

(C) keep all required records at the facility; and

(D) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(16) Fees. An animal crematory facility authorized under this section is exempt from the fee requirements of Subchapter P of this chapter (relating to Fees and Reporting).

(17) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this subsection.

(f) A permit by rule is granted for a dual chamber incinerator if the owner or operator complies with §106.491 of this title (relating to Dual-Chamber Incinerators).

(g) A permit by rule is granted for an air curtain incinerator if the owner or operator complies with §106.496 of this title (relating to Air Curtain Incinerators). An air curtain incinerator may not be located within 300 feet of an active or closed MSW landfill unit boundary.

(h) A standard air permit is granted for facilities that comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations).

§330.9. Registration Required.

(a) Except as provided in §§330.7, 330.11, 330.13, or 330.25 of this title (relating to Permit Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste (MSW) unless that

activity is authorized by a registration or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted waste to be stored, processed, or disposed. No person may commence physical construction of a new MSW management facility subject to this registration requirement without first having submitted a registration application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Application Procedures) and received a registration from the commission. A person shall include a statement justifying the facility's eligibility for a registration as established under this section. A person shall submit a claim for a registration by rule in duplicate with one copy sent directly to the appropriate Texas Commission on Environmental Quality regional office.

(b) A registration is required for an MSW transfer station facility that is used in the transfer of MSW to a solid waste processing or disposal facility from any of the following:

(1) a municipality with a population of less than 50,000;

(2) a county with a population of less than 85,000;

(3) a facility used in the transfer of MSW that transfers or will transfer 125 tons per day or less; or

(4) a transfer station located within the permitted boundaries of an MSW Type I or Type IV facility as specified in §330.5(c) of this title (relating to Classification of Municipal Solid Waste Facilities).

(c) A registration is required to establish a waste-separation/recycling facility established at a permitted MSW facility if owned by the permittee.

(d) A registration is required for a facility where the only operation is the storage and/or processing of used and scrap tires as provided for in Chapter 328 of this title (relating to Waste Minimization and Recycling). These facilities shall be registered with the executive director in accordance with Chapter 328 of this title. Failure to operate such registered facilities in accordance with the requirements established in Chapter 328 of this title may be grounds for the revocation of the registration.

(e) A licensed hospital may function as a medical waste collection and transfer facility for generators that generate less than 50 pounds of untreated medical waste per month and that transport their own waste if:

(1) the hospital is located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million; or

(2) the hospital is located in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population more than 25,000 or within a county with a population of more than one million. The hospital shall submit a request to the executive director for registration as a medical waste collection station.

(f) A registration is required for any new MSW Type V transfer station that includes a material recovery operation that meets all of the following requirements.

(1) Materials recovery. The owner or operator must recover 10% or more by weight or weight equivalent of the total incoming waste stream for reuse or recycling; ensure that the incoming waste has already been reduced by at least 10% through a source-separation recycling program; or, also operate one or more source-separation recycling programs in the county where the transfer station is located and those source-separation recycling programs manage a total weight or weight equivalent of recyclable materials equal to 10% or more by weight or weight equivalent of the incoming waste stream to all transfer stations to which credit is being applied. The owner or operator must demonstrate in the registration application the method that will be used to assure that the 10% requirement is achieved.

(2) Distance to a landfill. The transfer facility must demonstrate in the registration application that it will transfer the remaining nonrecyclable waste to a landfill not more than 50 miles from the facility.

(g) Except as provided in §330.11(d) of this title, a registration is required for an MSW Type V processing facility that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes in accordance with either paragraph (1) or (2) of this subsection. For the purposes of this section, grit trap waste means grit trap waste from commercial car washes and excludes grit trap waste from other generators.

(1) The facility must attain a 10% recovery of material for beneficial use from the incoming waste. Recovery of material for beneficial use is considered to be the recovery of fats, oils, greases, and the recovery of food solids for composting, but does not include the recovery of water. The Type V processing facilities issued a registration under a permit exemption based on 10% recovery of material for beneficial use must maintain records in accordance with the requirements of §330.219(b)(9) of this title (relating to Recordkeeping and Reporting Requirements). Records and a report must be provided on a quarterly basis to the executive director that demonstrate that at least 10% of the volume of the waste received was processed to recover solid material that was recycled or reused. Failure to achieve the relevant percent recycling rate in any two quarters within any one-year period will cause a registration to terminate and will require the owner or operator of the facility to obtain a permit to continue facility operations. The quarterly report must provide the volume received, percent solids, and the method of determining the percent solids, processed, disposed, and recycled or reused. Records must be kept on a volume basis in gallons except that solids passing the paint filter test may be reported in cubic yard volume converted to gallons. The methods of recycling or reuse must be specified in the report. Records must be kept for solids and recyclable material leaving these facilities in the form of manifests, shipping documents, or trip tickets. The quarterly report must include manifests, shipping documents, or trip tickets to show where the recyclable material was taken for recycling, and the recycled material must be reconciled with the volume of waste received. Water discharged from processing is not allowed to be counted as part of the 10% recovery of material. Recovery and recycling or reuse of fats, oils, and greases may be considered a part of recycling for this activity. Composting of solids resulting from waste processing may be considered to be recycling as part of this activity. Any material such as lime, polymer, or flocculent added as part of the facility process is not allowed to be considered as part of the 10% recovery of material from the waste stream and must be subtracted from the material considered as recycled. Diversion of material from the waste stream without processing is not considered to be recycling as part of this activity.

(2) The Type V processing facility must be located at a manned treatment facility that is permitted under Texas Water Code, Chapter 26; is permitted to discharge at least one million gallons per day; and is owned by and operated for the benefit of a political subdivision of this state. Facilities that have received a permit and wish to add capacity may apply for a registration in lieu of a permit amendment if the facilities meet the registration requirements established in this chapter.

(h) A registration is required for a mobile liquid waste processing unit that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. For the purposes of this section, grit trap waste means grit trap waste from commercial car washes and excludes grit trap waste from other generators. Registration applications shall contain the information specified in §§330.59(a) and (e) - (h), 330.61(a) and (b), and 330.63(a), (d)(7), (h), and (j) of this title (relating to Contents of Part I of the Application; Contents of Part II of the Application; and Contents of Part III of the Application). The following requirements also apply.

(1) Mobile liquid waste processing shall be limited to the processing of liquid waste while at the generator's trap.

(2) Effluent from the processing of the liquid waste must be discharged to the generator's trap or interceptor.

(3) The mobile liquid waste processing units regulated under this section include truck-mounted processes that are also known as separator trucks, and any other liquid waste processes that are not considered to be fixed to a specific location.

(4) This section is not meant to supplant rules or ordinances of local governments where stricter standards are in effect.

(5) This section is not applicable to septage if waste has received only a pH adjustment prior to or during transportation for disposal at a treatment facility permitted under Texas Water Code, Chapter 26, or other authorized facility. Transporters who only adjust septage pH during transportation shall register in accordance with §312.142 of this title (relating to Transporter Registration).

(i) A registration is required for an MSW Type VI facility that demonstrates new management methods for processing or handling grease trap waste, grit trap waste, septage, or a combination of these three liquid wastes. For the purposes of this section, grit trap waste means grit trap waste from commercial car washes and excludes grit trap waste from other generators. Those facilities meeting this exemption must obtain a registration by meeting the operational criteria and design criteria established in §330.63(d)(9) of this title.

(j) A registration is required for the following material recovery operations from a landfill. The following operations are subject to the general requirements found in §330.601 of this title (relating to General Requirements), and the requirements set for soil end product standards in §330.615 of this title (relating to Final Soil Product Grades and Allowable Uses), and the air quality requirements in §330.607 of this title (relating to Air Quality Requirements):

(1) operations that recover reusable or recyclable material buried in permitted or closed MSW landfill facilities, or MSW landfill facilities that were never permitted;

(2) operations that reclaim soil from permitted or closed MSW landfills, or from MSW landfill facilities that were never permitted; and

(3) facilities that have received prior approval for excavation of buried materials through permits, permit amendments, or other agency authorization, which are exempt from further authorization requirements, as established in this subchapter, for the specific authorization received. Soil final product standards shall be applicable for all registered facilities.

(k) A registration by rule is granted for the owner or operator of a Type IX MSW facility that recovers landfill gas for beneficial use if all of the following conditions are met.

(1) The owner or operator shall submit the following information at least 60 days prior to commencing operations:

(A) a large-scale plan drawing of the facility showing the following:

(i) facility boundaries (show permit boundaries and/or boundaries and dimensions of tract or land or closed MSW landfill units on which the gas recovery system is to be developed); and

(ii) landfill gas treatment, gas compression, electrical power generation equipment, and any other beneficial gas-use equipment, indicating limits of waste placement and additional easements required;

(B) for enclosed structures, provisions for fire control facilities (fire hydrants, fire extinguisher, water tanks, and waterwell), continuous methane monitoring, and explosion-proof fixtures;

(C) a discussion of the proposed method for condensate disposal, including during the landfill post-closure care period;

(D) an estimation of average daily gas production;

(E) an estimation of the design daily gas production;

(F) descriptions of the process units;

(G) a cost estimate for closure following the requirements of §330.505 of this title (relating to Closure Cost Estimates for Storage and Processing Units); and

(H) a description of the financial assurance mechanism required by Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities).

(2) The owner or operator shall acquire all authorizations regarding air emissions for the facility and comply with the following regulations:

(A) Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units);

(B) §330.459 and §330.461 of this title (relating to Closure Requirements for Municipal Solid Waste Storage and Processing Units; and Certification of Final Facility Closure); and

(C) §330.505 of this title.

(l) A registration by rule is granted for persons that plan to transport untreated medical waste and that are not the generator of the waste if all of the following conditions are met.

(1) The registrant completes registration forms provided by the commission and provides the following information at least 60 days prior to commencing operations:

(A) name, address, and telephone number of registrant;

(B) name, address, and telephone number of partners, corporate officers, and directors; and

(C) description of each transportation unit, including:

(i) make, model, and year;

(ii) motor vehicle identification number, if applicable;

(iii) license plate (tag) number, including state and year; and

(iv) name of transportation unit owner.

(2) The owner or operator submits the fee required by §330.1211(m) of this title (relating to Transporters of Untreated Medical Waste) along with the claim for the registration by rule.

(3) Registrations by rule expire after one year. The owner or operator must submit an annual fee in accordance with §330.1211(m) of this title. Failure to timely pay the annual fee eliminates the option to manage wastes until the owner or operator claims a new or renewed registration by rule.

(4) Persons that claim the registration maintain a copy of the registration form, as annotated by the executive director with an assigned registration number, at their designated place of business and with each transportation unit used to transport untreated medical waste.

(5) The owner or operator submits annual summary reports in accordance with applicable provisions in §330.1211(n) of this title.

(m) A registration by rule is granted for owners or operators of mobile treatment units conducting on-site treatment of medical waste who are not the generator if the following conditions are met.

(1) The registrant completes registration forms provided by the commission and provides the following information at least 60 days prior to commencing operations or expiration of a registration issued under the former rules before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) became effective:

(A) name, address, and telephone number of registrant;

(B) name, address, and telephone number of partners, corporate officers, and directors;

(C) description of each mobile treatment unit, including:

(i) make, model, and year;

(ii) motor vehicle identification number, if applicable; and

(iii) license plate (tag) number, including state and year;

(D) name of mobile treatment unit owner;

(E) description of approved treatment method to be employed and chemical preparations, as well as the procedure to be utilized for routine performance testing/parameter monitoring;

(F) evidence of competency;

(G) a description of the management and disposal of process waters generated during treatment events;

(H) a written contingency plan that describes the handling and disposal of waste in the event of treatment failure or equipment breakdown; and

(I) an estimate of the cost to remove and dispose of waste and disinfect the waste treatment equipment and evidence of financial assurance using procedures specified in Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates) and Chapter 37, Subchapter R of this title.

(2) The owner or operator submits the fee required by §330.1221(k) of this title (relating to On-Site Treatment Services on Mobile Treatment Units) along with the claim for the registration by rule.

(3) The executive director will send a copy of the registration form, annotated with an assigned registration number, to the owner or operator,

(4) Registrations by rule expire after one year. The owner or operator must submit an annual renewal fee in accordance with §330.1221(l) of this title. Failure to timely pay the annual fee eliminates the option to manage wastes until the owner or operator claims a new or renewed registration by rule.

(5) The owner or operator submits annual summary reports in accordance with applicable provisions in §330.1221(l) of this title.

(6) Providers of on-site treatment of medical waste in mobile units notify the executive director, by letter, within 30 days of any changes to their registration if:

(A) the method employed to treat medical waste changes;

(B) the office or place of business is moved;

(C) the name of registrant or owner of the operation is changed;

(D) the name of the partners, corporate directors, or corporate officers change; or

(E) the unit information changes.

(n) A registration is required for facilities that store or process untreated medical waste that is received from off-site sources. For the purposes of this subsection, off-site shall be based on the definition of on-site found in §330.1205(b) of this title (relating to Definitions).

(o) A registration is required for a new MSW transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less.

(p) A registration is required for a new liquid waste transfer facility to be located on, or at, other commission-authorized facilities.

§330.11. Notification Required.

(a) Except as provided by §330.13 of the title (relating to Waste Management Activities Exempt from Permitting, Registration, or Notification) and recycling facilities that notify in accordance with §328.5 of this title (relating to Reporting and Recordkeeping Requirements), a person that intends to store, process, or dispose of municipal solid waste (MSW) without a permit as authorized by §330.7 of this title (relating to Permit Required), registration as authorized by §330.9 of this title (relating to Registration Required), or §330.25 of this title (relating to Relationship with County Licensing System), shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in these activities, except for recycling and other activities as may be specifically exempted. Additional information may be requested to enable the executive director to determine whether such storage, processing, or disposal is in compliance with the terms of this chapter. This information may include, but is not limited to, type of waste, waste management methods, facility engineering plans and specifications, and the geology and hydrogeology at the facility. Any information provided under this subsection shall be submitted to the executive director in duplicate with one copy sent directly to the Texas Commission on Environmental Quality (TCEQ) regional office. A person shall include a statement justifying the facility's eligibility for a notification as established under this section.

(b) Any person that stores, processes, or disposes of MSW shall have the continuing obligation to provide prompt written notice to the executive director of any changes or additional information concerning waste type, waste management methods, facility engineering plans and specifications, and geology and hydrogeology at the facility additional to that reported in subsection (a) of this section, authorized in any permit or registration, or stated in any application filed with the executive director. Any information provided under this subsection shall

be submitted to the executive director in duplicate form with copies sent directly to the TCEQ's regional office and any local pollution agency with jurisdiction that has requested to be notified.

(c) A person that stores, processes, or disposes of MSW shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing of any closure activity or activity of facility expansion not authorized by permit or registration, at least 90 days prior to conducting this activity. The executive director may request additional information to determine whether such activity is in compliance with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(d) A notification is required for the storage or processing of the following types of MSW: grease trap wastes; grit trap wastes; or septage that contains free liquids if the waste is treated/processed at a permitted Type I MSW facility.

(e) A notification is required for the following facilities or locations:

(1) a citizens' collection station;

(2) a collection and processing point for only nonputrescible source-separated recyclable material, provided that the facility is in compliance with §§328.3 - 328.5 of this title (relating to General Requirements; Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements);

(3) a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted Type I MSW facility;

(4) an MSW transfer station in existence prior to the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less. These liquid waste transfer stations must be designed and operated in accordance with the requirements of Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units);

(5) a temporary storage facility regulated under §312.147 of this title (relating to Temporary Storage) that stores 8,000 gallons or less for a period of four days or less in containers. This facility is not required to follow the requirements of Subchapter E of this chapter;

(6) a liquid waste transfer facility in existence prior to the effective date of the 2006 Revisions located on or at other commission authorized facilities if the facility is designed and operated in accordance with the requirements of Subchapter E of this chapter; or

(7) a pet cemetery. A person that intends to operate a pet cemetery shall comply with the requirements of §330.19 of this title (relating to Deed Recordation) and shall ensure that the animal carcasses are covered with at least two feet of soil within a time period that will prevent the generation of nuisance odors or health risks. A pet cemetery is a facility used only for the burial of domesticated animals kept as pets and service animals such as seeing-eye dogs. Animals raised for meat production or used only for animal husbandry may not be disposed of in a pet cemetery authorized under this subsection.

(f) A generator is required to notify the commission of the operation of an approved treatment process unit used only for the treatment of on-site generated medical waste, as defined in §330.1205(b) of this title (relating to Definitions).

(g) An operator is required to notify the commission of the intended operation of a low-volume transfer station subject to the following conditions.

(1) The operator must own or otherwise effectively control the facility.

(2) Prior to notification, the operator must coordinate with the county authority to ensure compliance with all appropriate ordinances.

(3) The operator must notify the adjacent landowners, by first-class mail, concurrent with commission notification.

(4) Collected waste shall be sent off-site to an authorized facility at least weekly.

(h) Generators that generate greater than 50 pounds per month of untreated medical waste and that transport their own untreated waste to an authorized medical waste storage or processing facility shall notify the commission.

§330.13. Waste Management Activities Exempt from Permitting, Registration, or Notification.

(a) A permit, registration, notification, or other authorization is not required for the disposal of up to 2,000 pounds per year of litter or other solid waste generated by an individual on that individual's own land and is not required to comply with §330.19 of this title (relating to Deed Recordation) provided that:

(1) the litter or waste is generated on land that the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land that the individual owns;

(4) the disposal is not for a commercial purpose;

(5) the waste disposed of is not hazardous waste or industrial waste;

(6) the waste disposal method complies with Chapter 111, Subchapter B of this title (relating to Outdoor Burning); and

(7) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance.

(b) A permit, registration, notification, or other authorization is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:

(A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

(B) the animals were killed on state highway rights-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway rights-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

(3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.171(c)(2) of this title (relating to Disposal of Special Wastes).

(c) A permit, registration, notification, or other authorization is not required for veterinarians performing activities as authorized by Texas Occupations Code, §801.361, Disposal of Animal Remains. Disposal by burning under this section must comply only with §111.209(3) of this title (relating to Exception for Disposal Fires).

(d) A permit, registration, notification, or other authorization is not required for on-site storage of medical waste for a generator that uses a medical waste storage facility only for medical waste generated on-site. Storage of medical waste generated on-site must be in compliance with §330.1209(a) of this title (relating to Storage of Medical Waste).

(e) A permit, registration, notification, or other authorization is not required for generators that generate less than 50 pounds per month of untreated medical waste that transport their own waste to an authorized medical waste storage or processing facility.

(f) Except as required by §330.7(c)(2) and §330.9(1) of this title (relating to Permit Required; and Registration Required), a permit, registration, notification, or other authorization is not required for transporters of municipal solid waste.

(g) A permit, registration, notification, or other authorization is not required for a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks.

(h) A permit, registration, notification, or other authorization is not required from a car wash facility for drying grit trap waste as long as these wastes are dried and disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to other property if the car wash facility and the property with the drying bed have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

§330.15. General Prohibitions.

(a) A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste (MSW), or the use or operation of a solid waste facility to store, process, or dispose of solid waste, or to extract materials under Texas Health and Safety Code, §361.092, in violation of the Texas Health and Safety Code, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes:

(1) the discharge or imminent threat of discharge of MSW into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the human health and welfare or the environment.

(b) MSW land disposal facilities (Types I, IAE, IV, IVAE, and VI) failing to satisfy the applicable requirements of this chapter, unless exempted by this chapter, are considered open dumps for purposes of state solid waste management planning under the Resource Conservation and Recovery Act and are prohibited under Resource Conservation and Recovery Act, §4005(a).

(c) Except as otherwise authorized by this chapter, a person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the commission.

(d) The open burning of solid waste, except for the infrequent burning of waste generated by land-clearing operations, agricultural waste, silvicultural waste, diseased trees, emergency cleanup operations as authorized by the commission or executive director as appropriate, is prohibited at any MSW landfill. The operation of an air curtain incinerator as allowed in §330.7(g) of this title (relating to Permit Required) other than for the exceptions noted in the previous sentence, is prohibited.

(e) The following wastes are prohibited from disposal in any MSW facility.

(1) A lead acid storage battery shall not be intentionally or knowingly offered by a generator or transporter for disposal at an MSW landfill or incinerator, and/or shall not be intentionally or knowingly accepted for disposal at an MSW landfill or incinerator permitted under this chapter.

(A) Each battery improperly disposed of constitutes a separate violation and offense.

(B) A person that violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Health and Safety Code, as amended.

(2) Do-it-yourself used motor vehicle oil shall not be intentionally or knowingly offered by a generator or transporter for disposal at an MSW landfill or MSW incinerator, either by itself or mixed with other solid waste, and/or shall not be intentionally or knowingly accepted for disposal at an MSW landfill or MSW incinerator permitted under this chapter.

(A) It is an exception to this subsection if the mixing or commingling of used oil with solid waste that is to be disposed of in a landfill is incidental to, and the unavoidable result of, the mechanical shredding of motor vehicles; appliances; or other items of scrap, used, or obsolete metals.

(B) A person that violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Health and Safety Code, as amended.

(3) Used oil filters from internal combustion engines shall not be offered for landfill disposal by any generator and shall not be intentionally or knowingly accepted for disposal at a landfill permitted under this chapter.

(4) Whole used or scrap tires shall not be accepted for disposal or disposed of in any MSW landfill, unless processed prior to disposal in a manner acceptable to the executive director.

(5) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC) must be handled in accordance with 40 Code of Federal Regulations §82.156(f), as amended.

(6) Except as allowed in §330.177 of this title (relating to Leachate and Gas Condensate Recirculation), liquid waste as defined in §330.3 of this title (relating to Definitions) and as described in subparagraphs (A) and (B) of this paragraph below shall not be disposed of in any MSW landfill unit.

(A) Bulk or noncontainerized liquid waste shall not be accepted for disposal or disposed of in an MSW landfill unless the waste is household waste other than septic waste.

(B) Containers holding liquid waste shall not be accepted for disposal or disposed of in an MSW landfill unless:

(i) the container is a small container similar in size to that normally found in household waste;

(ii) the container is designated to hold liquids for use other than storage; or

(iii) the waste is household waste.

(7) Regulated hazardous waste as defined in §330.3 of this title shall not be accepted at an MSW facility.

(8) Polychlorinated biphenyls (PCB) wastes, as defined under 40 Code of Federal Regulations Part 761, shall not be accepted for disposal or disposed of in an MSW facility unless authorized by the United States Environmental Protection Agency and the MSW permit.

(9) Radioactive materials as defined in Chapter 336 of this title (relating to Radioactive Substance Rules), except as authorized in Chapter 336 of this title or that are subject to an exemption of the Department of State Health Services shall not be accepted at an MSW facility.

(f) MSW facilities receiving sewage sludge and failing to satisfy the criteria of this chapter violate Federal Clean Water Act, §309 and §405(e).

(g) The drilling of any test borings, for any reason, through previously deposited waste or cover material without prior written authorization from the executive director is prohibited.

(h) An MSW facility shall not cause:

(1) a discharge of solid wastes or pollutants adjacent to or into waters of the state, including wetlands, that is in violation of the requirements of Texas Water Code, §26.121;

(2) a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System requirements, under §402, as amended, or Texas Pollutant Discharge Elimination System requirements;

(3) a discharge of dredged or fill material to waters of the United States, including wetlands, that is in violation of the requirements under Federal Clean Water Act, §404, as amended; and

(4) a discharge of a nonpoint source pollution into waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under Federal Clean Water Act, §208 or §319, as amended.

(i) Processing of liquid waste as defined in §330.3 of this title, other than that incidental to transfer and storage, at a transfer station without a specific Type V processing authorization is prohibited.

§330.19. Deed Recordation.

(a) Recording required. A person may not cause, suffer, allow, or permit the disposal of municipal solid waste prior to recording, in the county deed records of the county or counties in which the disposal takes place, a metes and bounds description of the portion or portions of the tract of land on which disposal of solid waste will take place.

(b) Proof of recordation. A certified copy of the recorded document shall be provided to the executive director prior to instituting disposal operations.

(c) Final recording. Upon completion of the disposal operation, closure of all landfill units, or final closure of the facility or site, or upon discovery of a closed municipal solid waste landfill or dumping area, the owner or operator shall file an "Affidavit to the Public" in a form provided by the executive director that includes an updated metes and bounds description of the extent of the disposal areas and the restrictions to future use of the land in accordance with §330.457(g) of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993) and §330.461(c)(1) of this title (relating to Certification of Final Facility Closure).

§330.23. Relationships with Other Governmental Entities.

(a) Texas Department of Transportation (TxDOT). The executive director shall coordinate with TxDOT on the review of all permit applications for municipal solid waste (MSW) land disposal facilities existing or proposed within 1,000 feet of an interstate or primary highway to determine the need for screening or special operating requirements. When primary access to an MSW disposal facility is provided by state-maintained streets or highways, the executive director shall solicit recommendations from TxDOT regarding the adequacy and design capacity of such roadways to safely accommodate the additional volumes and weights of traffic generated or expected to be generated by the facility operation.

(b) United States Army Corps of Engineers. The executive director shall coordinate the review of all permit applications for MSW disposal facilities with the appropriate district engineer to determine the need for a permit from the Corps of Engineers.

(c) Federal Aviation Administration (FAA). The executive director shall coordinate the review of permit applications for all MSW land disposal facilities existing or proposed in the vicinity of airports with the appropriate airports' district office of the FAA (FAA Advisory Circular 150/5200.33A, "Hazardous Wildlife Attractants on or Near Airports," July 27, 2004).

(d) Special districts. The Texas Health and Safety Code (THSC) applies to political subdivisions of the state to which the legislature has given waste handling authority for two or more counties. The relationship between the agency and any such waste handling authority will be similar to that between the agency and a county.

(e) Regional planning agencies. The agency will provide educational, technical, and advisory assistance to the various councils of governments and regional planning commissions throughout the state.

(f) Municipal governments. Municipalities may enforce the provisions of this chapter as provided for in the THSC and the Texas Water Code. The commission is committed to assisting municipal governments in an educational and advisory capacity. The commission is a necessary and indispensable party to any suit filed by a local government under the THSC and the Texas Water Code.

(g) County governments. County governments may exercise the authority provided in THSC, Chapters 361, 363, and 364, regarding the management of solid waste including the enforcement of the requirements of the THSC and this chapter. The provisions of THSC, Chapters 361, 363, and 364, allow county governments to require and issue licenses authorizing and governing the operation and maintenance of facilities used for the storage, processing, or disposal of solid waste not in the territorial or extraterritorial jurisdiction of a municipality. THSC, Chapters 361, 363, and 364, provide that no license for disposal of solid waste may be issued, renewed, or extended without the prior approval of the commission. Under Texas Water Code, Chapter 7, the commission is a necessary and indispensable party to any suit filed by a local government for the violation of any provision of the Solid Waste Disposal Act. If a permit is issued, renewed, or extended by the commission, the owner or operator of the facility does not need to obtain a separate license for the same facility from a county or from a political subdivision as defined in THSC, Chapters 361, 363, and 364.

(h) Texas Parks and Wildlife Department (TPWD). TPWD has jurisdiction over certain environmental issues that may be affected by MSW facilities including, but not limited to, endangered species and

wetlands. The executive director will solicit comments from, and consider information provided by, TPWD.

§330.25. Relationship with County Licensing System.

(a) General procedures. Under Texas Health and Safety Code, Chapters 361, 363, and 364, counties are empowered to require and issue licenses authorizing and governing the operation and maintenance of solid waste storage, processing, or disposal facilities not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. The county shall mail a copy of the approved license to the appropriate Texas Commission on Environmental Quality regional office. No license for the use of a facility for the disposal of solid waste may be issued, renewed, or extended without prior approval of the commission. The territorial limits and the extraterritorial jurisdiction of incorporated cities and towns are excluded from county authority to make regulations for the governing and controlling of solid waste collection, handling, storage, and disposal.

(b) Licensing procedures. The following pertain only to those counties that may choose to exercise licensing authority in accordance with this section.

(1) Licensing authority.

(A) Before exercising licensing authority for a municipal solid waste (MSW) facility required to obtain a permit, a county government shall promulgate regulations that are consistent with those established by the commission and that have been approved by the commission. A county exercising authority shall use the same evaluation processes as prescribed for use by the commission to include providing appropriate agencies, in accordance with §330.23 of this title (relating to Relationships with Other Governmental Entities) and Subchapter B of this chapter (relating to Permit and Registration Application Procedures), an opportunity to review and comment on those applications for which they may have a jurisdictional interest. In view of the technical evaluations and site investigations that must be made by some review agencies, ample time shall be allowed to receive and review agency comments prior to a public hearing. To ensure that review agencies are provided sufficient information on which to base a determination, counties will include in their permit application forms the data requirements as specified in permit applications used by the commission, supplemented by any other requirements deemed necessary by the individual counties.

(B) Before exercising licensing authority for an MSW facility that is not required to obtain a permit, a county government shall promulgate regulations that are compatible with those established by the commission. The county's regulations must be submitted to the commission for approval. At a minimum, county regulations shall be protective of human health and the environment.

(C) A county may not make regulations for MSW management within the extraterritorial or territorial jurisdiction of incorporated cities or towns.

(D) The commission will issue permits for MSW facilities located within the extraterritorial or territorial jurisdiction of incorporated cities or towns within the county.

(E) A county license for an MSW facility may not be issued, extended, or renewed without prior approval of the commission.

(F) Once a license is issued by a county and remains valid, a permit from the commission is not required.

(2) Public meeting. A county shall offer an opportunity for a public meeting and offer an opportunity for a public hearing, and issue appropriate notifications, in accordance with the procedures established in Chapter 39, Subchapter H of this title (relating to Applicability and General Provisions) and this chapter prior to issuance, amendment, extension, revocation, or renewal of a license.

(c) Contents of a license. A license for a solid waste facility issued by a county must include:

(1) the name and address of each person that owns the land on which the solid waste facility is located and the person that is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located;

(3) the terms and conditions on which the license is issued, including the duration of the license; and

(4) the volume of waste to be managed.

(d) Licensee's responsibilities. Solid waste facilities licensed by a county shall be operated in compliance with regulations of the commission and the county.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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30 TAC §§330.2 - 330.8, 330.10 - 330.15

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

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Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
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Proposal publication date: September 9, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER B. MUNICIPAL SOLID WASTE STORAGE

30 TAC §§330.21 - 330.26

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES

30 TAC §§330.53, 330.55, 330.57, 330.59, 330.61, 330.63, 330.65, 330.67, 330.69, 330.71, 330.73

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.53. Pre-application Review.

(a) Applicability. This section applies to potential permit owners or operators who desire to enter into agreements with affected persons and/or identify issues of local concern prior to submission of an application. A pre-application review process may be useful in situations where opposition to an application is likely to exist.

(b) Purpose. A pre-application review should serve to identify issues of concern, facilitate communication between a potential owner or operator and persons that would be affected by an application, and resolve as many points of conflict as possible prior to the submission of an application. A local review committee shall:

(1) interact with the owner or operator in a structured manner during the pre-application review stage of the permitting process and, if necessary, during the technical review stage of the permitting process, raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions. The owner or operator shall submit this report to the executive director with the owner's or operator's permit application.

(c) Procedure.

(1) If an owner or operator decides to participate in a local review committee process, the owner or operator shall file three copies of a notice of intent to file an application with the executive director. The filing of this notice initiates the pre-application review process.

The date of filing shall be the date the notice is stamped as received by the executive director. An owner or operator who wishes to have a pre-application meeting under the provisions of Texas Health and Safety Code, §361.0635, should include a draft Part I, as described in §330.59 of this title (relating to Contents of Part I of the Application) with their request.

(2) Upon receipt of the notice of intent to file, the executive director shall forward a copy of the notice and an explanation of the local review committee process by certified mail to:

(A) the appropriate mayor and county judge if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city; or

(B) the appropriate county judge if the proposed facility is to be located within an unincorporated area of the county; and

(C) the appropriate regional solid waste planning agency and council of governments (COG).

(3) Local review committees shall be composed of representatives of both local and regional interests and shall consist optimally of 12 individuals. However, an owner or operator may request a larger committee to better represent all interest groups present in a community or a smaller committee for economic reasons; however, committees shall maintain a 2:1 ratio of regional appointments to local appointments. Appointments to the local review committee shall be made according to the following guidelines.

(A) If a proposed facility is to be located within a particular city's limits, the mayor of the city shall be asked to make all local appointments.

(B) If a proposed facility is to be located in an unincorporated area, but within five miles of a city or cities, the mayor of each affected city shall be asked to appoint one member. The appropriate county judge shall be asked to appoint at least one member who lives within five miles of the proposed facility, if available and qualified. The county judge shall also be asked to appoint any remaining individuals necessary to complete local appointments to the committee.

(C) If a proposed facility would not be within five miles of a city, the appropriate county judge shall appoint at least one member, if available and qualified, who lives within five miles of the proposed facility and as many other individuals from the county as are necessary to complete the local appointments.

(D) Regional appointments shall be made by the appropriate regional solid waste planning agency/COG or another regional entity such as a special district or river authority designated by the COG. An attempt shall be made to make regional appointments from as many of the following interest groups as possible:

(i) organized environmental groups;

(ii) citizen organizations active in environmental issues;

(iii) industry, preferably, but not necessarily, individuals with expertise in waste management;

(iv) academic community, preferably, but not necessarily, individuals trained in a technical discipline related to waste management and/or public involvement;

(v) community or land-use planning;

(vi) organized public-interest advocates; and

(vii) public health professionals.

(E) If any local official or regional entity has failed to make the necessary appointments within 15 days after the notice of intent to file has been submitted, the owner or operator may cease the local review process.

(F) Every effort should be made to appoint individuals who are willing to participate in good faith, able to devote adequate time to participation, and respected in the community or region. An elected official shall not be appointed to the committee if the official is elected by a constituency wholly or partly within the localities surrounding the facility, and appointees shall not be employees or agents of the owner or operator.

(G) An individual shall not serve on more than one local review committee at any one time.

(4) The local review committee shall meet within 21 days after the notice of intent is filed. The executive director will provide manuals to committee members that will orient them as to what the committee's activities should be, i.e., the production of a report detailing issues resolved, issues unresolved, and questions not able to be answered.

(5) The pre-application review process shall continue for a maximum of 90 days unless it is shortened or lengthened by mutual agreement between the owner or operator and the local review committee.

(6) Individuals who serve on local review committees shall serve without compensation. The potential owner or operator shall provide resource support that may include clerical and technical assistance, a facilitator, meeting space, and/or other items that may be necessary to aid the committee in its work.

(d) Committee report.

(1) Any report produced by a local review committee set up under this section shall be submitted to the executive director with the owner's or operator's permit application. The executive director may consider the report as an additional source of information concerning the application.

(2) The report shall not recommend approval or disapproval of the proposed facility. Rather, it shall describe the committee's work and summarize the committee's findings. The findings shall include issues resolved, issues unresolved, and questions not able to be answered.

§330.57. Permit and Registration Applications for Municipal Solid Waste Facilities.

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I - IV. Parts I - IV of the application shall be required before the application is declared administratively complete in accordance with Chapter 281 of this title (relating to Applications Processing). The owner or operator shall submit a complete application, containing Parts I - IV, before a hearing can be conducted on the technical design merits of the application. An owner or operator applying for a permit may request a land-use only determination. If the executive director determines that a land-use only determination is appropriate, the owner or operator shall submit a partial application consisting of Parts I and II of the application. The executive director may process a partial permit application to the extent necessary to determine land-use compatibility alone. If the facility is determined to be acceptable on the basis of land use, the executive director will consider technical matters related to the permit application at a later time. When this procedure is followed, an opportunity for a public hearing will be offered for each determination in accordance with §39.419 of this title (relating to Notice of Application and Preliminary Decision). A complete application, consisting of Parts I - IV of the application, shall be

submitted based upon the results of the land-use only public hearing. Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are required to submit all parts of the application except for those items pertaining to Subchapters H and J of this chapter (relating to Liner System Design and Operation; and Groundwater Monitoring and Corrective Action). Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are exempt from the geology report requirements of §330.63(e) of this title (relating to Contents of Part III of the Application) except for the requirement to submit a soil boring plan in accordance with §330.63(e)(4) and (e)(4)(A) of this title, and the information requested in §330.63(e)(6) of this title.

(b) Registration application. A registration application for a municipal solid waste facility is also divided into Parts I - IV, but is not subject to a hearing request or to the administrative completeness determinations of Chapter 281 of this title.

(c) Parts of the application.

(1) Part I of the application consists of the information required in §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits), §305.45 of this title (relating to Contents of Application for Permit) and §330.59 of this title (relating to Contents of Part I of the Application).

(2) Part II of the application describes the existing conditions and character of the facility and surrounding area. Part II of the application shall consist of the information contained in §330.61 of this title (relating to Contents of Part II of the Application). Parts I and II of a permit application must provide information relating to land-use compatibility under the provisions of Texas Health and Safety Code, §361.069. Part II may be combined with Part I of the application or may be submitted as a separate document. An owner or operator must submit Parts I and II of the permit application before a land-use determination is made in accordance with subsection (a) of this section.

(3) Part III of the application contains design information, detailed investigative reports, schematic designs of the facility, and required plans. Part III shall consist of the documents required in §330.63 of this title.

(4) Part IV of the application contains the site operating plan that shall discuss how the owner or operator plans to conduct daily operations at the facility. Part IV shall consist of the documents required in §330.65 of this title (relating to Contents of Part IV of the Application).

(d) Required information. The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site. It is the responsibility of the applicant to provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners. Failure of the owner or operator to provide complete information as required by this chapter may be cause for the executive director to return the application without further action in accordance with §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review). Submission of false information shall constitute grounds for denial of the permit or registration application.

(e) Number of copies.

(1) Applications shall be initially submitted in four copies. The owner or operator shall furnish up to 18 additional copies of the application for use by required reviewing agencies, upon request of the executive director.

(2) For permit applications initially submitted to the executive director, the owner or operator shall also furnish Parts I and II, and any subsequent revisions to Parts I and II, to the regional council of governments.

(f) Preparation. Preparation of the application must conform with Texas Occupations Code, Texas Engineering Practice Act, Chapter 1001 and Texas Geoscience Practice Act, Chapter 1002.

(1) The responsible engineer shall seal, sign, and date the title page of each bound engineering report or individual engineering plan in the application and each engineering drawing as required by Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) The responsible geoscientist shall seal, sign, and date applicable items as required by Texas Geoscience Practice Act, §6.13(b), and in accordance with 22 TAC §851.156 (relating to Geoscientist's Seals).

(3) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(g) Application format.

(1) Applications shall be submitted in three-ring, "D"-ring, loose-leaf binders.

(2) The title page shall show the name of the project; the municipal solid waste permit application number, if known; the name of the owner and operator; the location by city and county; the date the part was prepared; and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(3) The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(4) The narrative of the report shall be printed on 8-1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions shall have the revision date and note that the sheet is revised in the header or footer of each revised sheet. The revised text shall be marked to highlight the revision.

(7) Dividers and tabs are encouraged.

(h) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines.

(3) Drawings shall be submitted at a standard engineering scale.

(4) Each drawing shall have a:

(A) dated title block;

(B) bar scale at least one-inch long;

(C) revision block;

(D) responsible engineer's or geoscientist's seal, if required; and

(E) drawing number and a page number.

(5) Each map or plan drawing shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and

(C) a legend.

(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.

(i) Posting application on internet.

(1) The owner or operator shall provide a complete copy of any application that requires public notice, except for authorizations at Type IAE and Type IVAE landfill facilities, including all revisions and supplements to the application, on a publicly accessible internet Web site, and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only.

(2) The commission shall post on its Web site the identity of all owners and operators filing such applications and the Web address link required by this subsection.

§330.59. Contents of Part I of the Application.

(a) General.

(1) Part I of the application consists of information that is required regardless of the type of facility involved. All items required by this section, §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits) and §305.45 of this title (relating to Contents of Application for Permit) must be submitted.

(2) Submittal of Part I by itself will not necessarily require publication of a notice of intent to obtain a municipal solid waste (MSW) permit under the provisions of Texas Health and Safety Code (THSC), §361.0665, or a notice concerning receipt of a permit application under the provisions of THSC, §361.079.

(3) For a permit application, submittal of Part I only will not allow a permit application to be declared administratively complete under the provisions of THSC, §361.068; §281.3 of this title (relating to Initial Review); and §281.18 of this title (relating to Applications Returned).

(b) Facility location. The owner or operator shall:

(1) provide a description of the location of the facility with respect to known or easily identifiable landmarks;

(2) detail the access routes from the nearest United States or state highway to the facility; and

(3) provide the longitudinal and latitudinal geographic coordinates of the facility.

(c) Maps.

(1) General. The maps submitted as a group shall show the elements contained in §305.45 of this title and the following:

(A) latitudes and longitudes; and

(B) the property boundary of the facility.

(2) General location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation (TxDOT). At least one general location map shall be at a scale of one-half inch equals one mile. If TxDOT publishes more detailed maps of the proposed facility area, the more detailed maps shall also be included in Part I. The latest revision of all maps shall be used.

(3) Land ownership map with accompanying landowners list.

(A) These maps shall comply with the requirements in §281.5 of this title by locating the property owned by adjacent and potentially affected landowners. The maps should show all property ownership within 500 feet of the facility, and all mineral interest ownership under the facility.

(B) The adjacent and potentially affected landowners' list shall be keyed to the land ownership maps and shall give each property owner's name and mailing address. The list shall comply with the requirements of §281.5 of this title, and shall include all property owners within 500 feet of the facility, and all mineral interest ownership under the facility. Property and mineral interest owners' names and mailing addresses derived from the real property appraisal records as listed on the date that the application is filed will comply with this paragraph. Notice of an application is not defective if property owners or mineral interest owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

(d) Property owner information. Property owner information shall include the following:

(1) the legal description of the facility;

(A) the legal description of the property and the county, book, and page number or other generally accepted identifying reference of the current ownership record;

(B) for property that is platted, the county, book, and page number or other generally accepted identifying reference of the final plat record that includes the acreage encompassed in the application and a copy of the final plat, in addition to a written legal description;

(C) a boundary metes and bounds description of the facility signed and sealed by a registered professional land surveyor; and

(D) drawings of the boundary metes and bounds description; and

(2) a property owner affidavit signed by the owner that includes the following:

(A) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the facility;

(B) for facilities where waste will remain after closure, acknowledgment that the owner has a responsibility to file with the county deed records an affidavit to the public advising that the land will be used for a solid waste facility prior to the time that the facility actually begins operating as a municipal solid waste landfill facility, and to file a final recording upon completion of disposal operations

and closure of the landfill units in accordance with §330.19 of this title (relating to Deed Recordation); and

(C) acknowledgment that the facility owner or operator and the State of Texas shall have access to the property during the active life and post-closure care period, if required, after closure for the purpose of inspection and maintenance.

(e) Legal authority. The owner and operator shall provide verification of their legal status as required by §281.5 of this title. Normally, this shall be a one-page certificate of incorporation issued by the secretary of state. The owner or operator shall list all persons having over a 20% ownership in the proposed facility.

(f) Evidence of competency. Requirements for demonstrating evidence of competency are as follows.

(1) The owner or operator shall submit a list of all Texas solid waste sites that the owner or operator has owned or operated within the last ten years. The site name, site type, permit or registration number, county, and dates of operation shall also be submitted.

(2) The owner or operator shall submit a list of all solid waste sites in all states, territories, or countries in which the owner or operator has a direct financial interest. The type of site shall be identified by location, operating dates, name, and address of the regulatory agency, and the name under which the site was operated.

(3) The executive director shall require that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), be employed before commencing facility operation.

(4) The names of the principals and supervisors of the owner's or operator's organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities.

(5) For landfill permit applications only, evidence of competency to operate the facility shall also include landfilling and earthmoving experience if applicable, and other pertinent experience, or licenses as described in Chapter 30 of this title possessed by key personnel, and the number and size of each type of equipment to be dedicated to facility operation.

(6) For mobile liquid waste processing units, the owner or operator shall submit a list of all solid waste, liquid waste, or mobile waste units that the owner or operator has owned or operated within the past five years. The owner or operator shall submit a list of any final enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government within the last five years relating to compliance with applicable legal requirements relating to the handling of solid or liquid waste under the jurisdiction of the commission or the United States Environmental Protection Agency. Applicable legal requirement means an environmental law, regulation, permit, order, consent decree, or other requirement.

(g) Appointments. The owner or operator shall provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications). If the authority has been delegated, provide a copy of the document issued by the governing body of the owner or operator authorizing the person that signed the application to act as agent for the owner or operator.

(h) Application fees.

(1) In accordance with §305.53 of this title (relating to Application Fee), the application fee for a permit, registration, amendment, modification, or temporary authorization is $150.

(2) For a development permit or registration over a closed municipal solid waste landfill, THSC, §361.532, requires the Texas Commission on Environmental Quality (TCEQ) to charge an application fee equal to the actual cost of reviewing the application prior to the issuance of a development permit. The owner or operator shall submit an initial application fee of $2,500 to be submitted in the form of a check or money order made payable to the TCEQ. Upon completion of the review process, including the public meeting, the executive director shall present the owner or operator with a refund for an overcharge, or an invoice for an undercharge.

§330.61. Contents of Part II of the Application.

(a) Existing conditions summary. The owner or operator shall determine and report to the executive director any site-specific conditions that require special design considerations and possible mitigation of conditions identified in subsections (h) - (o) of this section. The owner or operator may discuss any additional land-use, environmental, or special issues in an existing conditions summary.

(b) Waste acceptance plan.

(1) The owner or operator shall identify the sources and characteristics of wastes (i.e., residential, commercial, grease trap, grit trap, soluble sludges, septage, special wastes, Class 2 or Class 3 industrial solid wastes, compost feedstocks, etc.) proposed to be received for storage, processing, or disposal. Municipal solid waste facilities may not receive regulated hazardous waste. If a waste constituent or characteristic could be a limiting parameter that may impact or influence the design and operation of the facility, the owner or operator shall specify parameter limitations of each type of waste to be managed by the facility, which may include constituent concentrations and characteristics such as pH, fats, oil and grease concentrations, total suspended solids, chemical oxygen demand, biochemical oxygen demand, organic and metal constituent concentrations, water content, or other constituents. The owner or operator shall include:

(A) a brief description of the general sources and generation areas contributing wastes to the facility. This description shall include an estimate of the population or population equivalent served by the facility. Additionally, if applicable, a descriptive narrative must be included that describes the percentage of incoming waste that must be recovered and its intended use;

(B) for transfer stations, the maximum amount of solid waste to be received daily and annually projected for five years, the maximum amount of solid waste to be stored, the maximum and average lengths of time that solid waste is to remain at the facility, and the intended destination of the solid waste received at this facility; and

(C) for landfills, an estimated maximum annual waste acceptance rate for the facility projected for five years.

(2) For registration applications, this information shall also establish why a facility qualifies for a registration in accordance with §330.9 of this title (relating to Registration Required).

(c) General location maps. The owner or operator shall provide maps in addition to those required by §330.59(c) of this title (relating to Contents of Part I of the Application) as necessary to accurately show proximity to surrounding features:

(1) the prevailing wind direction with a wind rose;

(2) all known water wells within 500 feet of the proposed permit boundary with the state well numbering system designation for Water Development Board "located wells";

(3) all structures and inhabitable buildings within 500 feet of the proposed facility;

(4) schools, licensed day-care facilities, churches, hospitals, cemeteries, ponds, lakes, and residential, commercial, and recreational areas within one mile of the facility;

(5) the location and surface type of all roads within one mile of the facility that will normally be used by the owner or operator for entering or leaving the facility;

(6) latitudes and longitudes;

(7) area streams;

(8) airports within six miles of the facility;

(9) the property boundary of the facility;

(10) drainage, pipeline, and utility easements within or adjacent to the facility;

(11) facility access control features; and

(12) archaeological sites, historical sites, and sites with exceptional aesthetic qualities adjacent to the facility.

(d) Facility layout maps. A map or set of maps showing:

(1) the outline of the units;

(2) general locations of main interior facility roadways, and for landfill units, the general locations of main interior facility roadways that can be used to provide access to fill areas ;

(3) locations of monitor wells;

(4) locations of buildings;

(5) any other graphic representations or marginal explanatory notes necessary to communicate the proposed construction sequence of the facility;

(6) fencing;

(7) provisions for the maintenance of any natural windbreaks, such as greenbelts, where they will improve the appearance and operation of the facility and, where appropriate, plans for screening the facility from public view;

(8) all site entrance roads from public access roads; and

(9) for landfill units:

(A) sectors with appropriate notations to communicate the types of wastes to be disposed of in individual sectors;

(B) the general sequence of filling operations;

(C) sequence of excavations and filling;

(D) dimensions of cells or trenches; and

(E) maximum waste elevations and final cover.

(e) General topographic maps. The owner or operator shall submit United States Geological Survey 7 1/2-minute quadrangle sheets or equivalent for the facility. At least one general topographic map shall be at a scale of one inch equals 2,000 feet.

(f) Aerial photograph.

(1) The owner or operator shall submit an aerial photograph approximately nine inches by nine inches with a scale within a range of one inch equals 1,667 feet to one inch equals 3,334 feet and showing the area within at least a one-mile radius of the site boundaries. The site boundaries and actual fill areas shall be marked.

(2) A series of aerial photographs can be used to show growth trends.

(3) If submitted, digital prints and photocopies of photographs must be legible.

(g) Land-use map. This is a constructed map of the facility showing the boundary of the facility and any existing zoning on or surrounding the property and actual uses (e.g., agricultural, industrial, residential, etc.) both within the facility and within one mile of the facility. The owner or operator shall make every effort to show the location of residences, commercial establishments, schools, licensed day-care facilities, churches, cemeteries, ponds or lakes, and recreational areas within one mile of the facility boundary. Drainage, pipeline, and utility easements within the facility shall be shown. Access roads serving the facility shall also be shown.

(h) Impact on surrounding area. A primary concern is that the use of any land for a municipal solid waste facility not adversely impact human health or the environment. The owner or operator shall provide information regarding the likely impacts of the facility on cities, communities, groups of property owners, or individuals by analyzing the compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest. To assist the commission in evaluating the impact of the site on the surrounding area, the owner or operator shall provide the following:

(1) if available, a published zoning map for the facility and within two miles of the facility for the county or counties in which the facility is or will be located. If the site requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval shall be submitted;

(2) information about the character of surrounding land uses within one mile of the proposed facility;

(3) information about growth trends within five miles of the facility with directions of major development;

(4) the proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.) within one mile of the facility. The owner or operator shall provide the approximate number of residences and commercial establishments within one mile of the proposed facility including the distances and directions to the nearest residences and commercial establishments. Population density and proximity to residences and other uses described in this paragraph may be considered for assessment of compatibility;

(5) a description and discussion of all known wells within 500 feet of the proposed facility. Well density may be considered for assessment of compatibility; and

(6) any other information requested by the executive director.

(i) Transportation. The owner or operator shall:

(1) provide data on the availability and adequacy of roads that the owner or operator will use to access the site;

(2) provide data on the volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the proposed facility;

(3) project the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility;

(4) submit documentation of coordination of all designs of proposed public roadway improvements such as turning lanes, storage lanes, etc., associated with site entrances with the agency exercising maintenance responsibility of the public roadway involved. In addi-

tion, the owner or operator shall submit documentation of coordination with the Texas Department of Transportation for traffic and location restrictions; and

(5) for landfill units and landfill mining operations, analyze the impact of the facility upon airports in accordance with §330.545 of this title (relating to Airport Safety). The owner or operator shall submit documentation of coordination with the Federal Aviation Administration for compliance with airport location restrictions.

(j) General geology and soils statement. The reports prepared under this subsection must meet the following requirements:

(1) discuss in general terms the geology and soils of the proposed site;

(2) for landfills, identify and provide data on fault areas located within the proposed site in accordance with §330.555 of this title (relating to Fault Areas);

(3) for landfills, identify and provide data on seismic impact zones in accordance with §330.557 of this title (relating to Seismic Impact Zones); and

(4) for landfills, identify and provide data on unstable areas in accordance with §330.559 of this title (relating to Unstable Areas).

(k) Groundwater and surface water. The owner or operator shall submit:

(1) data about the site-specific groundwater conditions at and near the site;

(2) data on surface water at and near the site; and

(3) information demonstrating how the municipal solid waste facility will comply with applicable Texas Pollutant Discharge Elimination System (TPDES) storm water permitting requirements and the Clean Water Act, §402, as amended. This information may include, but is not limited to:

(A) a certification statement indicating the owner/operator will obtain the appropriate TPDES permit coverage when required; or

(B) a copy of the permit number for coverage under an individual wastewater permit.

(l) Abandoned oil and water wells.

(1) The owner or operator shall identify the location of any and all existing or abandoned water wells situated within the facility. Water wells necessary for supply for operations at the landfill may remain in use as long as the wells are located outside of the groundwater monitoring well network, and are not subject to impact from landfill operations. Water wells that will be used for supply at the landfill that are located inside of the groundwater monitoring network, but outside the landfill unit boundary, may be used if identified and approved in the facility permit. For all other facility water wells, the owner or operator shall provide, within 30 days prior to construction, the executive director with written certification that all such wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the commission or other state agency.

(2) The owner or operator shall identify the location of any and all existing or abandoned on-site crude oil or natural gas wells, or other wells associated with mineral recovery that are under the jurisdiction of the Railroad Commission of Texas. The owner or operator shall provide the executive director with written certification that these wells have been properly capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas at the time of application. Producing crude oil or natural gas wells that do not affect or hamper landfill operations may remain in their current state, if identified in the permit for the facility.

(m) Floodplains and wetlands statement. The floodplains and wetlands statement must:

(1) provide data on floodplains in accordance with Chapter 301, Subchapter C of this title (relating to Approval of Levees and Other Improvements);

(2) include a wetlands determination under applicable federal, state, and local laws and discuss wetlands in accordance with §330.553 of this title (relating to Wetlands). For the purpose of this subsection, demonstration can be made by providing evidence that the facility has a Corps of Engineers permit for the use of any wetlands area; and

(3) identify wetlands located within the facility boundary.

(n) Endangered or threatened species.

(1) The owner or operator shall consider the impact of a solid waste disposal facility upon endangered or threatened species. The facility and the operation of the facility shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.

(2) For landfill applications, the owner or operator shall submit Endangered Species Act compliance demonstrations as required under state and federal laws and determine whether the facility is in the range of endangered or threatened species. If the facility is located in the range of endangered or threatened species, the owner or operator shall have a biological assessment prepared by a qualified biologist in accordance with standard procedures of the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department to determine the effect of the facility on the endangered or threatened species. Where a previous biological assessment has been made for another project in the general vicinity, a copy of that assessment may be submitted for evaluation. The United States Fish and Wildlife Service and the Texas Parks and Wildlife Department shall be contacted for locations and specific data relating to endangered and threatened species in Texas.

(o) Texas Historical Commission review. The owner or operator shall submit a review letter from the Texas Historical Commission documenting compliance with the Natural Resources Code, Chapter 191, Texas Antiquities Code.

(p) Council of governments and local government review request. The owner or operator shall submit documentation that Parts I and II of the application were submitted for review to the applicable council of governments for compliance with regional solid waste plans. The owner or operator shall also submit documentation that a review letter was requested from any local governments as appropriate for compliance with local solid waste plans. A review letter is not a prerequisite to a final determination on a permit or registration application.

§330.63. Contents of Part III of the Application.

(a) Site development plan. This plan must include criteria that in the selection and design of a facility will provide for the safeguarding of the health, welfare, and physical property of the people and the environment through consideration of geology, soil conditions, drainage, land use, zoning, adequacy of access roads and highways, and other considerations as the specific facility dictates. The site development plan must include the items listed in this section.

(b) General facility design.

(1) Facility access. The owner or operator shall describe how access will be controlled for the facility such as the type and location of fences or other suitable means of access control to prevent the entry of livestock, to protect the public from exposure to potential health and safety hazards, and to discourage unauthorized entry or uncontrolled disposal of solid waste or hazardous materials.

(2) Waste movement. The owner or operator shall submit a generalized process design and working plan of the overall facility that includes, at a minimum:

(A) flow diagrams indicating the storage, processing, and disposal sequences for the various types of wastes and feedstocks received;

(B) schematic view drawings showing the various phases of collection, separation, processing, and disposal as applicable for the types of wastes and feedstocks received at the facility;

(C) proposed ventilation and odor control measures for each storage, separation, processing, and disposal unit;

(D) generalized construction details of all storage and processing units and ancillary equipment (i.e., tanks, foundations, sumps, etc.) with regard to approximate dimensions and capacities, construction materials, vents, covers, enclosures, protective coatings of surfaces, etc. Performance data on all units shall be provided;

(E) generalized construction details of slab and subsurface supports of all storage and processing components;

(F) locations and engineering design details of all containment dikes or walls (with indicated freeboard) proposed to enclose all storage and processing components and all loading and unloading areas;

(G) plans for the storage of grease, oil, and sludge on site including determinations of maximum periods of time all separated materials will remain on site and the ultimate disposition of such materials off site;

(H) proposed disposition of effluent resulting from all processing operations; and

(I) for transfer stations, provide designs for noise pollution control.

(3) Sanitation. The owner or operator shall describe how solid waste processing facilities will be designed to facilitate proper cleaning. This may be accomplished by:

(A) controlling surface drainage in the vicinity of the facility to prevent surface water runoff onto, into, and off the treatment area;

(B) constructing walls and floors in operating areas of masonry, concrete, or other hard-surfaced materials that can be hosed down and scrubbed;

(C) providing necessary connections and equipment to permit thorough cleaning with water or steam; and

(D) providing adequate floor or sump drains to remove wash water.

(4) Water pollution control. The owner or operator shall describe how all liquids resulting from the operation of solid waste processing facilities will be disposed of in a manner that will not cause surface water or groundwater pollution. The owner or operator shall provide for the treatment of wastewaters resulting from the process or from cleaning and washing and specify how the procedure for wastewater disposal is in compliance with the rules of the commission.

(5) Endangered species protection. If necessary, the owner or operator shall describe how the facility will be designed to protect endangered species.

(c) Facility surface water drainage report. The owner or operator of a municipal solid waste (MSW) facility shall include a statement that the facility design complies with the requirements of §330.303 of this title (relating to Surface Water Drainage for Municipal Solid Waste Facilities). Additionally, applications for landfill and compost units shall include a surface water drainage report to satisfy the requirements of Subchapter G of this chapter (relating to Surface Water Drainage) and shall include the following.

(1) Drainage analyses. The owner or operator shall submit the following information and analyses:

(A) drawing(s) showing the drainage areas and drainage calculations;

(B) designs of all drainage facilities within the facility area, including such features as typical cross-sectional areas, ditch grades, flow rates, water surface elevation, velocities, and flowline elevations along the entire length of the ditch;

(C) sample calculations provided to verify that existing drainage patterns will not be adversely altered;

(D) a description of the hydrologic method and calculations used to estimate peak flow rates and runoff volumes including justification of necessary assumptions:

(i) the 25-year rainfall intensity used for facility design including the source of the data; all other data and necessary input parameters used in conjunction with the selected hydrologic method and their sources should be documented and described;

(ii) hydraulic calculations and designs for sizing the necessary collection, drainage, and/or detention facilities;

(iii) discussion and analyses to demonstrate that existing drainage patterns will not be adversely altered as a result of the proposed landfill development; and

(iv) structural designs of the collection, drainage, and/or storage facilities.

(2) Flood control and analyses. The owner or operator shall:

(A) identify whether the site is located within a 100-year floodplain. If applicable, indicate 100-year floodplain on the drawing in paragraph (1)(A) of this subsection;

(B) provide the source of all data for such determination and include a copy of the relevant Federal Emergency Management Agency (FEMA) flood map or the calculations and maps used where a FEMA map is not used. FEMA maps are prima facie evidence of floodplain locations. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e. g., wave action) that must be considered in designing, constructing, operating, or maintaining the proposed facility to withstand washout from a 100-year flood. The boundaries of the proposed landfill facility should be shown on the floodplain map;

(C) if the site is located within the 100-year floodplain, provide information detailing the specific flooding levels and other events (e.g., design hurricane projected by Corps of Engineers) that impact the flood protection of the facility. Data should be that required by §§301.33 - 301.36 of this title (relating to Preliminary Plans: Data To Be Submitted, Criteria For Approval of Preliminary Plans; Additional Information; Plans To Bear Seal of Engineer). The owner or operator

shall include cross-sections or elevations of landfill levees shown tied into contours;

(D) for construction in a floodplain, submit, where applicable:

(i) approval from the governmental entity with jurisdiction under Texas Water Code, §16.236, as implemented by Chapter 301 of this title (relating to Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements);

(ii) a floodplain development permit from the city, county, or other agency with jurisdiction over the proposed improvements;

(iii) a Conditional Letter of Map Amendment from FEMA; and

(iv) a Corps of Engineers Section 404 Specification of Disposal Sites for Dredged or Fill Material permit for construction of all necessary improvements.

(d) Waste management unit design.

(1) Storage and transfer units. The owner or operator shall:

(A) describe how the solid waste management facility will be designed for the rapid processing and minimum detention of solid waste at the facility. The owner or operator shall specify that all solid waste capable of creating public health hazards or nuisances be stored indoors only and processed or transferred promptly and shall not be allowed to result in nuisances or public health hazards. If the facility is in continuous operation, such as for resource or energy recovery, the owner or operator shall provide design features for wastes storage units that will prevent the creation of nuisances or public health hazards due to odors, fly breeding, or harborage of other vectors;

(B) design the units to control and contain spills and contaminated water from leaving the facility. The design shall be sufficient to control and contain a worst-case spill or release from the unit. Unenclosed containment areas shall also account for precipitation from a 25-year, 24-hour rainfall event; and

(C) specify the maximum allowable period of time that unprocessed and processed wastes are to remain on site.

(2) Incineration units. The owner or operator shall provide waste feed rates, an estimate of the amount and planned method for testing and final disposal of incinerator ash, an estimate of the volume of quench or process water, and the planned method of treatment and disposal of such water.

(3) Surface impoundments. The owner or operator shall provide:

(A) design specifications for surface impoundments, including a plan view and cross-section of the impoundment;

(B) the minimum freeboard to be maintained and the basis of the design to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on (if allowed); malfunctions of level controllers, alarms, and other equipment; and human error. The owner or operator shall show that adequate freeboard will be available to prevent overtopping from a 25-year, 24-hour rainfall event; and/or

(C) in accordance with §330.339 of this title (relating to Liner Quality Control Plan), a liner quality control plan prepared in accordance with Subchapter H of this chapter (relating to Liner System Design and Operation).

(4) Landfill units. The owner or operator shall specify:

(A) provisions for all-weather operation, e.g., all-weather road, wet-weather pit, alternative disposal facility, etc., and provisions for all-weather access from publicly owned routes to the disposal facility and from the entrance of the facility to unloading areas used during wet weather. Interior access road locations and the type of surfacing shall be indicated on a facility plan. The roads within the facility shall be designed so as to minimize the tracking of mud onto the public access road;

(B) the landfill method proposed, e.g., moving-face cell or trench, area fill, or combination;

(C) elevation of deepest excavation, maximum elevation of waste, maximum elevation of final cover;

(D) a calculation of the estimated rate of solid waste deposition and operating life of the landfill unit. As a general rule, 10,000 people with a per capita collection rate of five pounds per day, dispose of 10 - 15 acre-feet of solid waste in one year;

(E) landfill unit cross-sections consisting of plan profiles across the facility clearly showing the top of the levee, top of the proposed fill (top of the final cover), maximum elevation of proposed fill, top of the wastes, existing ground, bottom of the excavations, side slopes of trenches and fill areas, gas vents or wells, and groundwater monitoring wells, plus the initial and static levels of any water encountered. The owner or operator shall provide a sufficient number of cross-sections, both latitudinally and longitudinally, so as to accurately depict the existing and proposed depths of all fill areas within the site. The plan portion shall be shown on an inset key map. The fill cross-sections shall go through or very near the soil borings in order that the boring logs obtained from the soils report can also be shown on the profile;

(F) construction and design details of compacted perimeter or toe berms that are proposed in conjunction with aboveground (aerial-fill) waste disposal areas shall be included in the fill cross-sections; and

(G) a liner quality control plan prepared in accordance with Subchapter H of this chapter.

(5) Arid exemption landfill application information. Owners or operators of new, existing, and lateral expansions of small MSW landfill facilities that meet the criteria in §330.5(b) of this title (relating to Classification of Municipal Solid Waste Facilities) shall submit a certification of eligibility to the executive director and place a copy of the certification in the operating record. The certification shall be signed by a principal executive officer, a ranking elected official, or an independent professional engineer licensed to practice in the State of Texas. The certification must contain the following information:

(A) a statement certifying that the small MSW landfill facility meets all requirements contained in §330.5(b) of this title for exemptions from Subchapter H of this chapter (relating to Liner System Design and Operation) and Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action);

(B) documentation that the small MSW landfill facility receives for disposal an annual average of less than 20 tons per day of authorized types of waste in a Type IAE landfill unit and/or less than 20 tons per day of authorized types of waste in a Type IVAE landfill unit for a total waste acceptance rate less than 40 tons per day for the facility, based upon the most recent four reporting quarters or a certification that programs have been put in place, or will be implemented, to reduce the annual average to less than 20 tons per day based on an annual average for each landfill unit type within one year;

(C) documentation that there are no practicable waste management alternatives available. The documentation shall demonstrate one of the following:

(i) additional costs of available alternatives are estimated to exceed 1.0% of the owner's or operating community's budget for all public services;

(ii) haul distances to alternative sites are unreasonably long; or

(iii) all other alternatives are not feasible to implement, given the community location and economic condition; and

(D) documentation that the small MSW landfill unit receives less than or equal to 25 inches of average annual precipitation as determined from precipitation data for the nearest official precipitation recording station for the most recent 30-year reporting period.

(6) Type V mobile liquid waste processing units. The owner or operator shall provide the following:

(A) documentation of affirmative local government approval or acceptance of the mobile unit operation, including conformity with local ordinances, local rules, or requirements set forth by the treatment facility for the discharge, including local limits, zoning restrictions, permits, licenses, authorizations, etc. These regulations do not grant authorization for operation of mobile liquid waste processing units in noncompliance with local government ordinances and regulations or without the express approval of the local wastewater authority. Discharge from a mobile liquid waste processing unit is allowed only at selected disposal points selected by the local treatment facility permitted under Texas Water Code, Chapter 26, so that they can be monitored by the local treatment facility; and

(B) written approval from the receiving treatment facility permitted under Texas Water Code, Chapter 26.

(7) Type IX energy, material, gas recovery for beneficial use, or landfill mining waste processing units. The owner or operator shall provide:

(A) For wastes to be excavated, a test pit evaluation report prepared by an engineer. Prior approval of a test pit plan must be obtained from the executive director before excavation of test pits including location and depth of all test pits, including a discussion and information on the following:

(i) a description of the characteristics of waste observed in test pits excavated on the site to include the percent of paper, plastics, ferrous metal, other metal, glass, other constituents, and soil fraction by weight;

(ii) a design for the test pits to extend four feet beneath the waste or to a depth authorized by the executive director and information submitted to include a Toxicity Characteristic Leaching Procedure (TCLP) of the soil to characterize the soil beneath the site. Liners if present shall not be disrupted;

(iii) a TCLP analysis of each representative type of waste excavated. Additionally, waste excavated from each test pit must be analyzed for asbestos and polychlorinated biphenyls (PCBs). Consideration should be given to the analysis of waste material from each test pit for hazardous waste constituents;

(iv) a determination as to a sufficient number of test pits to establish the properties of the waste. A site of five acres or less must have a minimum of three test pits. Sites larger than five acres must have three test pits plus one for every additional five acres or fraction of an acre. The number of test pits shall be approved by the executive director prior to making the pits. The test pits should be sufficiently large enough to provide representative information;

(v) a description of how all test pits will be backfilled with clean high plasticity or low plasticity clay. The excavation shall be backfilled to exceed the existing grade and provide positive drainage;

(vi) a cross-section drawing using the information from the test pits to depict the top and bottom elevations of the landfill;

(vii) a plan view map depicting the location and extent (vertical and lateral) of the waste unit and proposed extent of mining/recovery operations. In areas with liners, mining operations should not extend below the top of the protective cover of the liner. In areas where no liner exists, excavation operations may extend below the waste;

(viii) an evaluation of historical records of landfill operations, where available, to determine such things as hazardous waste potential, receipt of special waste, types of waste received, special waste disposal areas, construction or demolition waste disposal areas, methane and leachate records, age, volume, disposal methods, existence of liners, gas collection systems, and leachate collection systems; and

(ix) a description of how all waste removed in test pit evaluation will be disposed of in a permitted landfill;

(B) a process description to include:

(i) a list of the typical materials intended for processing along with the anticipated volume to be processed. This description shall also contain an estimate of the daily quantity of material to be processed at the facility along with a description of the proposed process of screening for hazardous materials;

(ii) the methods of excavating the buried waste materials. The owner or operator shall indicate how the material will be handled, how long it will remain in the area, what equipment will be used, how the material will be moved from the excavation area, how the excavation area will be held to a minimum, the maximum side slopes in buried waste, and the maximum excavation area at any one time. The owner or operator shall provide the sequence of excavation;

(iii) the processes used to recover reusable or recyclable material or energy. The narrative shall include any water addition, processing rates, equipment, and mass balance or energy balance calculations;

(iv) how any process water will be handled and disposed of if a wet mining process is to be used;

(v) a complete narrative on product distribution to include items such as disposition of material or energy recovered and probable use of soils on site and off site; and

(vi) a process diagram that depicts the general process;

(C) a description of liner system used for excavated waste storage, processing, and screening areas to control seepage and runoff. The liner shall be covered with a material designed to withstand normal traffic from the processing operations; and

(D) a description of how waste excavation activities will comply with the minimum design and operation requirements of:

(i) §330.149 (relating to Odor Management Plan);

(ii) §330.151 (relating to Disease Vector Control);

(iii) §330.165 (relating to Landfill Cover); and

(iv) §330.167 (relating to Ponded Water).

(8) Compost units. The owner or operator shall provide:

(A) for mechanical composting systems, a detailed engineering description of the system and the manufacturer's performance data;

(B) facility layout, including calculations for area requirements;

(C) a description of the movement of the material as it leaves the tipping area indicating how the material is incorporated into the composting process and what handling techniques are used all the way through to the post-processing area. The narrative must include:

(i) processing rates;

(ii) equipment;

(iii) mass balance calculations;

(iv) use of bulking agents, moisture control, or feed amendments;

(v) process monitoring methods;

(vi) temperature range and resident time;

(vii) storage of compost for curing after the primary composting operation; and

(viii) provision for additional drying and screening;

(D) a narrative on the post-processing process, including post-processing times, identification and segregation of product, storage of product, and quality assurance and quality control; and

(E) a narrative on product distribution including items such as end-product quantities, anticipated final grades, packaging, labeling, loading, marketing, distribution, tracking, and delivery of composted material.

(9) Type VI waste processing demonstration facilities.

(A) The facility size shall be limited to a liquid waste processing rate no greater than 10,000 gallons per day.

(B) The facility design and operation shall be coordinated with a consultant connected with an accredited college or university or with a consultant that has demonstrated the ability to carry out scientific experiments for demonstrating new and unproven waste handling methods and submitted to the executive director. The owner or operator shall submit to the executive director an annual and final status report to document the viability of the method being demonstrated. The report, at a minimum, must document the effluent standards and solid waste standards achieved.

(C) The owner or operator may request a variance.

(i) In specific cases, the executive director may approve a variance from the requirements of this chapter if the variance is not contrary to safeguarding the health, welfare, and physical property of the people and to protecting the environment. A variance may not be approved concerning the procedural requirements of this chapter.

(ii) A request for a variance must be submitted in writing to the executive director. The request may be made in an application for a registration. Any approval of a variance must be in writing from the executive director.

(e) Geology report. This portion of the application applies to owners or operators of MSW landfills, compost units, and if otherwise requested by the executive director. The geology report shall be prepared and signed by a qualified groundwater scientist. Previously prepared documents may be submitted but must be supplemented as necessary to provide the requested information. Sources and references for information must be provided. The geology report must contain the following information:

(1) a description of the regional geology of the area that includes:

(A) a geologic map of the region with text describing the stratigraphy and lithology of the map units. An appropriate section of a published map series such as the Geologic Atlas of Texas prepared by the Bureau of Economic Geology is acceptable; and

(B) a description of the generalized stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable groundwater, or from a depth of 1,000 feet, whichever is less, to the land surface. The geologic age, lithology, variations in lithology, thickness, depth, geometry, hydraulic conductivity, and depositional history of each geologic unit should be described based upon available geologic information. Regional stratigraphic cross-sections should be provided;

(2) a description of the geologic processes active in the vicinity of the facility that includes an identification of any faults and subsidence in the area of the facility. The information about faulting and subsidence shall include at least that required in §330.555(b) and §330.559 of this title (relating to Fault Areas and Unstable Areas);

(3) a description of the regional aquifers in the vicinity of the facility based upon published and open-file sources that provides:

(A) aquifer names and their association with geologic units described in paragraph (2) of this subsection;

(B) the composition of the aquifer(s);

(C) the hydraulic properties of the aquifer(s);

(D) information on whether the aquifers are under water table or artesian conditions;

(E) information on whether the aquifers are hydraulically connected;

(F) a regional water-table contour map or potentiometric surface map for each aquifer, if available;

(G) an estimate of the rate of groundwater flow;

(H) typical values or a range of values for total dissolved solids content of groundwater from the aquifers;

(I) identification of areas of recharge to the aquifers within five miles of the site; and

(J) the present use of groundwater withdrawn from aquifers in the vicinity of the facility. The identification, location, and aquifer of all water wells within one mile of the property boundaries of the facility shall be provided;

(4) the results of investigations of subsurface conditions at a particular waste management unit. This report must describe all borings drilled on site to test soils and characterize groundwater and must include a site map drawn to scale showing the surveyed locations and elevations of the borings. Boring logs must include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Geophysical logs of the boreholes may be useful in evaluating the stratigraphy. Each boring must be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers, description of each layer using the unified

soil classification, color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure must be provided. The boring plan, including locations and depths of all proposed borings, shall be approved by the executive director prior to initiation of the work.

(A) A sufficient number of borings shall be performed to establish subsurface stratigraphy and to determine geotechnical properties of the soils and rocks beneath the facility. Other types of samples may also be taken to provide geologic and geotechnical data. The number of borings necessary can only be determined after the general characteristics of a site are analyzed and will vary depending on the heterogeneity of subsurface materials. Locations with stratigraphic complexities such as non-uniform beds that pinch out, vary significantly in thickness, coalesce, or grade into other units, will require a significantly greater degree of subsurface investigation than areas with simple geologic frameworks.

(B) Borings shall be sufficiently deep enough to allow identification of the uppermost aquifer and underlying hydraulically interconnected aquifers. Borings shall penetrate the uppermost aquifer and all deeper hydraulically interconnected aquifers and be deep enough to identify the aquiclude at the lower boundary. All the borings shall be at least five feet deeper than the elevation of the deepest excavation. In addition, at least the number of borings shown on the Table of Borings shall be drilled to a depth at least 30 feet below the deepest excavation planned at the waste management unit, unless the executive director approves a different depth. If no aquifers exist within 50 feet of the elevation of the deepest excavation, at least one test hole shall be drilled to the top of the first perennial aquifer beneath the site, if sufficient data does not exist to accurately locate it. The executive director may accept data equivalent to a deep boring on the site to determine information for aquifers more than 50 feet below the site. Aquifers more than 300 feet below the lowest excavation and where the estimated travel times for constituents to the aquifer are in excess of 30 years plus the estimated life of the site need not be identified through borings.
Figure: 30 TAC §330.63(e)(4)(B)

(C) All borings shall be conducted in accordance with established field exploration methods. The hollow-stem auger boring method is recommended for softer materials; coring may be required for harder rocks. Other methods shall be used as necessary to obtain adequate samples for soil testing required in this paragraph. Investigation procedures shall be discussed in the report.

(D) Installation, abandonment, and plugging of the borings in accordance with the rules of the commission.

(E) Both the number and depth of borings may be modified because of site conditions with approval of the executive director.

(F) Geophysical methods, such as electrical resistivity, may be used with authorization of the executive director to reduce the number of borings that may be necessary or to provide additional information between borings.

(G) Cross-sections must be prepared from the borings depicting the generalized strata at the facility. For small waste management units, two perpendicular cross-sections will normally suffice.

(H) A narrative that describes the investigator's interpretations of the subsurface stratigraphy based upon the field investigation shall be provided;

(5) geotechnical data that describes the geotechnical properties of the subsurface soil materials and a discussion with conclusions about the suitability of the soils and strata for the uses for which they are intended. All geotechnical tests shall be performed in accordance with industry practice and recognized procedures such as described below. A brief discussion of geotechnical test procedures including:

(A) a laboratory report of soil characteristics determined from at least one sample from each soil layer or stratum that will form the bottom and side of the proposed excavation and from those that are less than 30 feet below the lowest elevation of the proposed excavation. Additional tests shall be performed, as necessary, to provide a typical profile of soil stratification within the site. No laboratory work need be performed on highly permeable soil layers such as sand or gravel. The samples shall be tested by a competent independent third-party soils laboratory;

(B) permeability tests performed according to one of the following standards on undisturbed soil samples. Permeability tests shall be performed using tap water or .05 Normal solution of calcium sulfate ($CaSO_4$), and not distilled water, as the permeant. Those undisturbed samples that represent the sidewall of any proposed cell, pit, or excavation shall be tested for the coefficient of permeability on the sample's in-situ horizontal axis; all others shall be tested on the in-situ vertical axis. All test results shall indicate the type of tests used and the orientation of each tested sample. All calculations for the final coefficient of permeability tests result for each sample tested shall be included in the report:

(i) constant head with back pressure per Appendix VII of Corps of Engineers Manual EM1110-2-1906, "Laboratory Soils Testing;" American Society for Testing and Materials (ASTM) D5084 "Saturated Porous Materials Using a Flexible Wall Permeameter";

(ii) falling head per Appendix VII of Corps of Engineers Manual EM1110-2-1906, "Laboratory Soils Testing";

(iii) sieve analysis for the 200, and less than 200 fraction per ASTM D1140;

(iv) Atterberg limits per ASTM D4318; and

(v) moisture content per ASTM D2216;

(C) the depth at which groundwater was encountered and records of after-equilibrium measurements in all borings. The cross-sections prepared in response to paragraph (4)(G) of this subsection must be annotated to note the level at which groundwater was first encountered and the level of groundwater after equilibrium is reached or just prior to plugging, whichever is later. This water-level information must also be presented on all borings required by paragraph (4) of this subsection and presented in a table format in the report;

(D) records of water-level measurements in monitoring wells. Historic water-level measurements made during any previous groundwater monitoring shall be presented in a table for each well;

(E) a tabulation of all relevant groundwater monitoring data from wells on site or on adjacent MSW landfill unit(s); and

(F) identification of the uppermost aquifer and any lower aquifers that are hydraulically connected to it beneath the facility, including groundwater flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area);

(6) for owners and operators seeking an arid exemption for their landfill unit designs, a groundwater certification process must be used for meeting the provisions for groundwater certification of the arid exemption, as described in §330.5(b) of this title:

(A) locate and plot the facility accurately on a topographic map (7.5-minute or 15-minute United States Geological Sur-

vey quadrangle). Draw a line to enclose all of the area within one mile of the facility boundary;

(B) visit the facility and locate by physical inspection water wells and springs in the facility area. Determine the locations and plot them on the topographic map:

(i) if no wells or springs exist within the facility area, refer to subparagraph (I) of this paragraph. Otherwise, refer to clause (ii) of this subparagraph; and

(ii) determine from appropriate records (for example, water-well drillers, pump installers, city records, underground water conservation district, Texas Water Development Board, Texas Commission on Environmental Quality, United States Geological Survey, etc.) which of the wells are completed in the shallowest aquifer. If no wells are completed in the shallowest aquifer or if the shallowest aquifer is more than 150 feet below the land surface at the facility, refer to subparagraph (I) of this paragraph. Otherwise, refer to subparagraph (C) of this paragraph;

(C) determine the groundwater gradient of the shallowest aquifer in the vicinity of the facility. This can be done by measuring stabilized water levels in wells completed in the shallowest aquifer in the facility area (from subparagraph (B)(ii) of this paragraph) or from previous hydrogeologic studies using contemporaneous stabilized water-level measurements. Care should be taken to measure water levels when nearby high-volume wells, such as irrigation wells, have not been pumped for a long enough period to allow the water level to stabilize. Where no data exist or cannot be determined, the regional gradient can be used;

(D) from springs and from the wells completed in the shallowest aquifer, select the two wells/springs downgradient of and nearest to the facility based on the findings from subparagraph (C) of this paragraph. Select a well/spring upgradient or lateral to the facility, where groundwater quality is not likely to have been affected by landfill activities and preferably not by other human activities such as oil and gas operations, feedlots, sewage treatment plants, septic systems, etc;

(E) sample the three selected wells/springs determined by subparagraphs (C) and (D) of this paragraph in accordance with accepted practices, such as described in technical guidance from the executive director. The owner or operator shall have the samples analyzed by a qualified laboratory for the following parameters:

(i) chloride;

(ii) nitrate (as N);

(iii) sulfate;

(iv) total dissolved solids;

(v) specific conductance;

(vi) pH;

(vii) chromium;

(viii) non-purgeable organic carbon; and

(ix) volatile organic compounds listed in §330.419 of this title (relating to Constituents for Detection Monitoring);

(F) if permission cannot be obtained to sample one or more of the three selected wells/springs, select one or more alternate wells/springs, within the plotted area. If fewer than three wells/springs are available, sample those that are available;

(G) if permission cannot be obtained to sample any appropriately located wells/springs, submit written documentation of the facts to the executive director. If the executive director confirms that permission cannot be obtained for sampling, the well(s) may be eliminated from consideration;

(H) compile the data from subparagraphs (A) - (F) of this paragraph in a report that includes:

(i) a map showing all known wells, springs, facility boundaries, sampling points, etc.;

(ii) a map showing the groundwater gradient and data points;

(iii) chemical analyses, showing analytical methods used;

(iv) logs and construction information for the sampled wells and description and flow rate for sampled springs;

(v) text describing methods of investigation, such as sampling and water-level measurements; and

(vi) conclusions with respect to presence or lack of evidence of groundwater contamination by the facility;

(I) where no wells or springs are present in the facility area or the shallowest water level is more than 150 feet below land surface at the facility, submit a brief report describing the facility (with a map of the area) and the method(s) of determining the lack of appropriate sampling points or depth to the shallowest aquifer. Confirmed absence of sampling points will be deemed to be "no evidence of groundwater contamination";

(J) the report shall be signed and sealed by the qualified groundwater scientist who reviewed the data and reached the conclusions;

(K) if there is no evidence of groundwater contamination by the landfill, the qualified groundwater scientist who reviewed the data and reached the conclusions shall sign and seal a statement in the following format: "I (we) have reviewed the groundwater data described in a report submitted with this certification and have found no evidence that the _____ municipal solid waste landfill located at _____ has contaminated groundwater in the uppermost aquifer"; and

(L) the executive director may accept information and data, other than described in this paragraph, as showing that there is no evidence of groundwater contamination by the landfill, if the information and data are deemed to be adequate for such a determination.

(f) Groundwater sampling and analysis plan. The groundwater sampling and analysis plan for landfills and if otherwise requested by the executive director for other MSW units must be prepared in accordance with Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action). The groundwater sampling and analysis plan for composting operations that require a permit must be prepared in accordance with the groundwater monitoring requirements of §332.47(6)(C)(ii) of this title (relating to Permit Application Preparation). As part of this plan for Type I landfills, submit the following:

(1) on a topographic map, a delineation of the waste management area, the property boundary, the proposed point of compliance as defined under §330.3 of this title (relating to Definitions), the proposed location of groundwater monitoring wells as required under §330.403 of this title (relating to Groundwater Monitoring Systems);

(2) a description of any plume of contamination that has entered the groundwater from an MSW management unit at the time that the application was submitted. In addition:

(A) delineate the extent of the plume on the topographic map required in paragraph (1) of this subsection; and

(B) identify the concentration of each assessment constituent as defined in §330.409 of this title (relating to Assessment Monitoring Program) throughout the plume or identify the maximum concentration of each assessment constituent in the plume;

(3) an analysis of the most likely pathway(s) for pollutant migration in the event that the primary barrier liner system is penetrated. This must include any groundwater modeling data and results as described in §330.403(e)(2) of this title and consider changes in groundwater flow that are expected to result from construction of the facility;

(4) detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of §330.403 of this title;

(5) if the hazardous constituents listed in the table located in 40 Code of Federal Regulations Part 258, Appendix I, and §330.419 of this title have not been detected in the groundwater at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program that meets the requirements of §330.407 of this title (relating to Detection Monitoring Program for Type I Landfills). This submission must address the following items as specified in §330.407 of this title:

(A) a proposed groundwater monitoring system;

(B) background values for each monitoring parameter or constituent listed in §330.419 of this title, or procedures to calculate such values; and

(C) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data;

(6) if the presence of hazardous constituents listed in §330.419 of this title has been detected in the groundwater at the time of the permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish an assessment monitoring program that meets the requirements of §330.409 of this title. To demonstrate compliance with §330.409 of this title, the owner or operator shall address the following items:

(A) a description of any special wastes previously handled at the MSW facility;

(B) a characterization of the contaminated groundwater, including concentration of assessment constituents as defined in §330.409 of this title;

(C) a list of assessment constituents as defined in §330.409 of this title for which assessment monitoring will be undertaken in accordance with §330.405 of this title (relating to Groundwater Sampling and Analysis Requirements) and §330.409 of this title;

(D) detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of §330.405 of this title; and

(E) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data; and

(7) if hazardous constituents have been measured in the groundwater that exceed the concentration limits established in §330.419 of this title, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of §330.411 and §330.413 of this title (relating to Assessment of Corrective Measures and Selection of Remedy). To demonstrate compliance with §330.411 of this title, the owner or operator shall address, at a minimum, the following:

(A) a characterization of the contaminated groundwater, including concentrations of assessment constituents as defined in §330.409 of this title;

(B) the concentration limit for each constituent found in the groundwater;

(C) detailed plans and an engineering report describing the corrective action to be taken;

(D) a description of how the groundwater monitoring program will demonstrate the adequacy of the corrective action; and

(E) a schedule for submittal of the information required in subparagraphs (C) and (D) of this paragraph provided the owner or operator obtains written authorization from the executive director prior to submittal of the complete permit application.

(g) Landfill gas management plan. A facility gas management plan shall be prepared to address all of the requirements in Subchapter I of this chapter (relating to Landfill Gas Management).

(h) Closure plan. The facility closure plan shall be prepared in accordance with Subchapter K of this chapter (relating to Closure and Post-Closure). For a landfill unit, the closure plan will include a contour map showing the final constructed contour of the entire landfill to include internal drainage and side slopes plus accommodation of surface drainage entering and departing the completed fill area plus areas subject to flooding due to a 100-year frequency flood. Cross-sections shall be provided.

(i) Post-closure plan. The facility post-closure care plan shall be prepared in accordance with Subchapter K of this chapter.

(j) Cost estimate for closure and post-closure care. The owner or operator shall submit a cost estimate for closure and post-closure care in accordance with Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates). For an existing facility, the owner or operator shall also submit a copy of the documentation required to demonstrate financial assurance as specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). For a new facility, a copy of the required documentation shall be submitted 60 days prior to the initial receipt of waste.

§330.69. Public Notice for Registrations.

(a) Notice to local governments. For mobile liquid waste processing unit registration applications only, upon filing a registration application, the owner or operator shall mail notice to the city, county, and local health department of any local government in which operations will be conducted notifying local governments that an application has been filed. Proof of mailing shall be provided to the executive director in the form of return receipts for registered mail. Mobile liquid waste processing unit registration applications are not subject to public meeting or sign-posting requirements under subsection (b) of this section.

(b) Opportunity for public meeting and posting notice signs. The owner or operator shall provide notice of the opportunity to request a public meeting and post notice signs for all registration applications not later than 45 days of the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit) and by posting signs at the proposed site. The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings)

or by Texas Health and Safety Code, §361.111(c). Notice of a public meeting shall be provided as specified in §39.501(e)(3) and (4) of this title. This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing. Applications for registrations filed before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) become effective are subject to the former rule requirements to conduct a public meeting. Applications for registrations filed after the 2006 Revisions become effective are subject to the 2006 Revisions requirements to provide notice of the opportunity to request a public meeting. The owner, operator, or a representative authorized to make decisions and act on behalf of the owner or operator shall attend the public meeting. A public meeting conducted under this section is not a contested case hearing under the Texas Government Code, Chapter 2001, Administrative Procedure Act. At the owner's or operator's expense, a sign or signs must be posted at the site of the proposed facility declaring that the application has been filed and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements.

(1) Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) be headed by the words "PROPOSED MUNICIPAL SOLID WASTE FACILITY";

(C) include the words "REGISTRATION NO.," the number of the registration, and the type of registration;

(D) include the words "for further information contact";

(E) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate commission permitting office;

(F) include the name of the owner or operator, and the address of the appropriate responsible official;

(G) include the telephone number of the owner or operator;

(H) remain in place and legible until the period for filing a motion to overturn has expired. The owner or operator shall provide a verification to the executive director that the sign posting was conducted according to the requirements of this section; and

(I) describe how persons affected may request that the executive director and applicant conduct a public meeting.

(2) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the registered facility.

(3) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met.

(4) The executive director may approve variances from the requirements of paragraphs (1) and (2) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those subparagraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this subparagraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

(c) Notice of final determination. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. In accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update), if the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the land ownership map and landowners list required by §330.59 of this title (relating to Contents of Part I of the Application), and to other persons who timely filed public comment in response to public notice.

(d) Motion to overturn. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director's action on a registration application, under §50.139 of this title. The criteria regarding motions to overturn shall be explained in public notices given under Chapter 39 of this title (relating to Public Notice) and §50.133 of this title.

§330.71. Duration and Limits of Registrations and Permits.

(a) The executive director shall, after review of any application for registration, approve or deny an application in whole or in part. This action shall be based on whether the application meets the requirements of this chapter.

(b) Except as provided in subsections (e) and (f) of this section for demonstration facilities, a registration or permit is normally issued for the life of the facility but may be revoked, amended, or modified at any time if the operating conditions do not meet the minimum standards set forth in this chapter or for any other good cause.

(c) When deemed appropriate a registration or permit may be issued for a specific period of time. When an owner or operator has made timely and sufficient application for the renewal of a registration or permit, the existing registration or permit does not expire until the application has been finally determined by the commission.

(d) A registration or permit is issued to a specific person (see definition of person contained in §3.2 of this title (relating to Definitions)) and may not be transferred from one person to another without complying with the transfer approval requirements of the commission.

(e) Except for transporters and mobile treatment units, a registration or permit is attached to the realty to which it pertains and may not be transferred from one facility to another.

(f) Demonstration projects for liquid waste processing facilities shall be limited to a two-year period. Re-registration of a demonstration facility may be considered only if the new method being demonstrated is not widely used in Texas.

(g) If a registered facility does not commence physical construction within two years of issuance of a registration or within two years of the conclusion of the appeals process, whichever is longer, the registration shall automatically terminate and will no longer be effective.

(h) If a registered mobile liquid waste processing unit does not begin operation within two years of obtaining its registration, the registration shall terminate and no longer be effective.

(i) A registration shall be considered to be a permit for purposes of revocation and denial under Chapter 305 of this title (relating to Consolidated Permits).

(j) The owner or operator may file with the chief clerk a motion to overturn the executive director's denial of a registration under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

§330.73. Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities.

(a) If at any time during the life of the facility the owner or operator becomes aware of any condition in the permit or registration that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the facility in compliance, the owner or operator shall submit to the executive director requested changes to the permit or registration in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) and must be approved prior to their implementation.

(b) All drawings or other sheets prepared for requested revisions must be submitted following the format in §330.57(g) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities). All revised engineering and geoscientific plans, drawings, and reports shall be signed and sealed by a licensed professional engineer or geoscientist as specified in §330.57(f) of this title.

(c) A preconstruction conference shall be held prior to commencement of physical construction for a municipal solid waste (MSW) landfill facility, a vertical landfill expansion, or a lateral landfill expansion. The preconstruction conference shall not be held more than 90 days prior to the date that construction is scheduled to begin. All aspects of the permit, construction activities, and inspections shall be discussed. Additional preconstruction conferences may be held prior to the opening of a new MSW landfill unit. The executive director and owner's representatives, including the engineer, the geotechnical consultant, the contractor, and the facility manager, shall attend the preconstruction conference.

(d) The owner or operator shall obtain and submit certification by a Texas-licensed professional engineer that the facility has been constructed as designed in accordance with the issued registration or permit and in general compliance with the regulations prior to initial operation. The owner or operator shall maintain that certification on site for inspection.

(e) After all initial construction activity has been completed and prior to accepting any solid waste, the owner or operator shall contact the executive director and region office in writing and request a pre-opening inspection. A pre-opening inspection shall be conducted by the executive director within 14 days of notification by the owner or operator that all construction activities have been completed, accompanied by representatives of the owner or operator and the engineer.

(f) The MSW facility shall not accept solid waste until the executive director has confirmed in writing that all applicable submissions required by the permit or registration and this chapter have been received and found to be acceptable, and that construction is in compliance with the permit or registration and the approved site development plan. If the executive director has not provided a written or verbal response within 14 days of completion of the pre-opening inspection, the facility shall be considered approved for acceptance of waste.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron Perdue
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For further information, please call: (512) 239-0348

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SUBCHAPTER C. MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION

30 TAC §§330.31 - 330.34

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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30 TAC §§330.101, 330.103, 330.105, 330.107

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which

establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

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SUBCHAPTER D. CLASSIFICATION OF MUNICIPAL SOLID WASTE FACILITIES

30 TAC §330.41

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeal implements THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeal also implements Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. OPERATIONAL STANDARDS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES

30 TAC §§330.121, 330.123, 330.125, 330.127, 330.129, 330.131, 330.133, 330.135, 330.137, 330.139, 330.141, 330.143, 330.145, 330.147, 330.149, 330.151, 330.153, 330.155, 330.157, 330.159, 330.161, 330.163, 330.165, 330.167, 330.169, 330.171, 330.173, 330.175, 330.177, 330.179

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Per-

mits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.121. General.

(a) The approved site development plan, the site operating plan, the final closure plan, the post-closure maintenance plan, the landfill gas management plan, and all other documents and plans required by this chapter shall become operational requirements and shall be considered a part of the operating record of the facility. Any deviation from the permit and incorporated plans or other related documents associated with the permit is a violation of this chapter.

(b) To the extent that a requirement has been changed by the rule amendments that became effective December 2, 2004 (2004 Revisions), the facility may continue to operate under requirements contained in previously issued authorizations, except as provided by this subchapter. The landfill permittee is under an obligation to apply for a permit modification in accordance with §305.70(k) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the 2004 Revisions. A permittee's application to modify its permit in accordance with the executive director's schedule will be processed as a modification and any subsequent applications will be processed in accordance with Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits). The executive director will determine a schedule for landfill permittees to submit an application to modify their permit to conform to the 2004 Revisions. Timely submission of a request for a permit modification qualifies the owners or operators of existing permits to operate under requirements contained in the existing permit. Landfill permit applications that were pending December 2, 2004, are subject to the former rules unless an applicant elects to proceed under the rules that became effective December 2, 2004.

(c) To the extent that requirements of this subchapter have been changed by the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions), a landfill permittee may continue to operate under an existing permit and is not required to apply to modify or amend an existing permit to comply with the 2006 Revisions. The requirements of §330.165(d)(4) of this title (relating to Landfill Cover) supersede any inconsistent provisions contained in existing permits.

§330.125. Recordkeeping Requirements.

(a) A copy of the permit, the approved site development plan, the site operating plan, the final closure plan, the post-closure maintenance plan, the landfill gas management plan, and any other required plan or other related document shall be maintained at the municipal solid waste facility, or an alternate location approved by the executive director. This requirement shall be considered a part of the operating record for the facility.

(b) The owner or operator shall within seven working days of completion or receipt of analytical data, as appropriate, record and retain in the operating record the following information:

(1) any and all location-restriction demonstrations;

(2) inspection records, training procedures, and notification procedures relating to excluding the receipt of prohibited waste;

(3) all results from gas monitoring and any remediation plans relating to explosive and other gases;

(4) any and all unit design documentation for the placement of leachate or gas condensate in a municipal solid waste landfill;

(5) any and all demonstration, certification, findings, monitoring, testing, and analytical data relating to groundwater monitoring and corrective action;

(6) closure and post-closure care plans and any monitoring, testing, or analytical data relating to post-closure requirements;

(7) any and all cost estimates and financial assurance documentation relating to financial assurance for closure and post-closure;

(8) any and all information demonstrating compliance with the small community exemption criteria;

(9) copies of all correspondence and responses relating to the operation of the facility, modifications to the permit, approvals, and other matters pertaining to technical assistance;

(10) any and all documents, manifests, shipping documents, trip tickets, etc., involving special waste;

(11) for any spray-applied alternative daily cover (ADC) material, records of the application rate and total amount ADC applied to the working face on those days in which ADC is applied; and

(12) any other document(s) as specified by the approved permit or by the executive director.

(c) The owner or operator shall place all information specified in subsections (a) and (b) of this section in the operating record. The owner or operator shall place this information in the operating record in accordance with the time period specified in subsection (b) of this section and maintain the operating record in an organized format which allows the information to be easily located and retrieved. All information contained in the operating record must be furnished upon request to the executive director and must be made available for inspection by the executive director.

(d) The owner or operator shall retain all information contained within the operating record and the different plans required for the facility for the life of the facility including the post-closure care period.

(e) The owner or operator shall maintain training records in accordance with §335.586(d) and (e) of this title (relating to Personnel Training).

(f) The owner or operator shall maintain personnel operator licenses issued in accordance with Chapter 30, Subchapter F of this title (relating to Municipal Solid Waste Facility Supervisors), as required.

(g) The executive director may set alternative schedules for recordkeeping and notification requirements as specified in subsections (a) - (f) of this section, except for notification requirements contained in Subchapter M of this chapter (relating to Location Restrictions) for any proposed lateral expansion located within a six-mile radius of any airport runway end used by turbojet or piston-type aircraft or notification relating to landowners whose property overlies any part of the plume of contamination, if contaminants have migrated off site as indicated by groundwater sampling.

(h) The owner or operator shall maintain records to document the annual waste acceptance rate for the facility. Documentation must include maintaining the quarterly solid waste summary reports and the annual solid waste summary reports required by §330.675 of this title (relating to Reports) in the operating record. After an updated site

operating plan permit modification under §330.121(b) of this title (relating to General) is approved to comply with the rules that became effective December 2, 2004, if the annual waste acceptance rate exceeds the rate estimated in the landfill permit application and the waste increase is not due to a temporary occurrence, the owner or operator shall file an application to modify the permit application, including the revised estimated waste acceptance rate, in accordance with §305.70(k) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), within 90 days of the exceedance as established by the sum of the previous four quarterly summary reports. The application must propose any needed changes in the site operating plan to manage the increased waste acceptance rate to protect public health and the environment. The increased waste acceptance rate may justify requiring permit conditions that are different from or absent in the existing permit. This subsection is not intended to make an estimated waste acceptance rate a limiting parameter of a landfill permit.

§330.127. Site Operating Plan.

A site operating plan must include provisions for site management and the site operating personnel to meet the general and site-specific requirements of this subchapter. A site operating plan must be retained during the active life of the facility and throughout the post-closure care maintenance period. A site operating plan must include the following:

(1) a description of functions and minimum qualifications for each category of key personnel to be employed at the facility and for the supervisory personnel in the chain of command;

(2) a description, including the minimum number, size, type, and function, of the equipment to be utilized at the facility based on the estimated waste acceptance rate and other operational requirements, and a description of the provisions for back-up equipment during periods of breakdown or maintenance of this listed equipment;

(3) a description of the general instructions that the operating personnel shall follow concerning the operational requirements of this subchapter;

(4) identification of applicable training requirements under §335.586(a) and (c) of this title (relating to Personnel Training) that shall be followed;

(5) procedures for the detection and prevention of the disposal of prohibited wastes, including regulated hazardous waste as defined in 40 Code of Federal Regulations (CFR) Part 261, and of polychlorinated biphenyls (PCB) wastes as defined in accordance with 40 CFR Part 761 unless authorized by the United States Environmental Protection Agency. The detection and prevention program must include the following:

(A) procedures to be used by the owner or operator to control the receipt of prohibited waste. The procedures must include the random inspections of incoming loads and must include the inspection of compactor vehicles. In addition to the random inspections, trained staff shall observe each load that is disposed at the landfill;

(B) records of all inspections;

(C) training for appropriate facility personnel responsible for inspecting or observing loads to recognize prohibited waste;

(D) notification to the executive director, and any local pollution agency with jurisdiction that has requested to be notified, of any incident involving the receipt or disposal of regulated hazardous waste or PCB waste at the landfill; and

(E) provisions for the remediation of the incident; and

(6) general instructions required to be included in the site operating plan by other sections of this subchapter.

§330.129. Fire Protection.

The owner or operator shall maintain a source of earthen material in such a manner that it is available at all times to extinguish any fires. The source must be sized to cover any waste received for disposal not covered with six inches of earthen material. Sufficient on-site equipment must be provided to place a six-inch layer of earthen material to cover any waste not already covered with six inches of earthen material within one hour of detecting a fire. A site operating plan must contain calculations demonstrating the adequacy of the earthen material and to demonstrate that the type and number of equipment listed in the site operating plan will be able to transport the volume of earth required. The executive director may approve alternative methods of fire protection. The potential for accidental fires must be minimized by use of proper compaction and earthen material cover. A site operating plan must contain a fire protection plan that identifies the fire protection standards to be used at the facility and how personnel are trained. The operator must initiate procedures in accordance with the fire protection plan upon detection of a fire. For any municipal solid waste activity on a landfill that stores or processes combustible materials, such as solidification basins, brush collection areas, construction or demolition waste areas, composting areas, mulching areas, shredding areas, and used oil storage areas, the site operating plan must address fire protection measures specific to each individual activity. If a fire occurs that is not extinguished within ten minutes of detection, the commission's regional office must be contacted immediately after detection, but no later than four hours by telephone, and in writing within 14 days with a description of the fire and the resulting response.

§330.131. Access Control.

Public access to all municipal solid waste facilities must be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment. Uncontrolled access to other operations located at a municipal solid waste facility must be prevented. The provisions for access control must be specified in the site operating plan. The preferred method of landfill access control is fences and gates. Regardless of the access control method, the site operating plan must include an inspection and maintenance schedule, notification to the commission's regional office of a breach, provisions for temporary and permanent repairs, and notification to the commission's regional office when a permanent access control breach repair is completed. The commission's regional office, and any local pollution agency with jurisdiction that has requested to be notified, must be notified of the breach within 24 hours of detection. The breach must be temporarily repaired within 24 hours of detection and must be permanently repaired by the time specified to the commission's regional office when it was reported in the initial breach report. If a permanent repair can be made within eight hours of detection, no notice to the commission's regional office is required.

§330.133. Unloading of Waste.

(a) The unloading of solid waste must be confined to as small an area as practical. The maximum size of the unloading area must be specified in the site operating plan. The number and types of unloading areas must be identified. A trained staff person shall be provided at all facilities to monitor all incoming loads of waste. A trained staff person shall also be on duty during operating hours at each area where waste is being unloaded to direct and observe the unloading of solid waste. The owner or operator is not required to accept any solid waste that the owner or operator determines will cause or may cause problems in maintaining full and continuous compliance with these sections. Small municipal solid waste landfill facilities may submit a request to receive approval for an alternative plan, if sufficient justification is provided.

(b) The unloading of waste in unauthorized areas is prohibited. Any waste deposited in an unauthorized area must be removed

immediately and disposed of properly. Trained staff shall observe each load that is disposed at the landfill. The staff involved with unloading or inspection of waste shall have the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges, and have the unauthorized material removed by on-site personnel or otherwise properly managed by the facility. A record of unauthorized material removal must be maintained in the operating record.

(c) The unloading of prohibited wastes at the municipal solid waste facility must not be allowed. Prohibited wastes are listed in §330.15(e) of this title (relating to General Prohibitions). The permit issued to the municipal solid waste facility may also prohibit other wastes. Necessary steps shall be taken by the owner or operator to ensure compliance with this provision. Any prohibited waste must be returned immediately to the transporter or generator of the waste or otherwise properly managed by the landfill.

(d) Any Type I or Type IAE landfill facility may establish a brush and construction or demolition waste area on site that is designated to receive brush and construction or demolition waste.

(e) At Type IV landfills, only brush and construction or demolition waste and rubbish that are free of putrescible and household waste are allowed.

(f) In addition to the other operating requirements of this subchapter, Type IV landfill operators that accept rubbish shall provide the following during all periods of operation.

(1) A written procedure retained on site to ensure that containers with any putrescible wastes are not accepted. This might include or be a combination of a manifest system, surcharges, contractual agreements with transporters, or other acceptable means. This written procedure must be made available for review by the executive director. The procedure must be followed and must be modified as necessary to accomplish its purpose.

(2) A written procedure retained on site for the removal of any putrescible wastes and other prohibited waste to an approved disposal facility must specify the means to be used for removal of putrescible wastes illegally disposed of at the landfill. In all cases, such wastes must be removed from the working face immediately upon discharge and returned to the offending transporter's vehicle or placed in suitable collection bins and must not be allowed to remain on the landfill in the collection bins for more than 24 hours. The equipment necessary to meet the chosen alternative must be specified and must be on site and operable during operating hours. This written procedure must be made available for review by the executive director. The procedure must be followed and must be modified as necessary to accomplish its purpose.

(3) A procedure whereby the transporter certifications required by §330.7(c) of this title (relating to Permit Required) must be retained at the landfill and be available for inspection by the executive director.

(g) Type IV landfill owners or operators shall not accept wastes from completely enclosed containers or enclosed vehicles except in accordance with §330.169 of this title (relating to Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills).

(h) In addition to the requirements in §330.137 of this title (relating to Site Sign), Type IV landfill owners or operators shall identify wastes that are not allowed and state the landfill's requirements for transporters, such as certificates, manifests, and surcharges or other penalties that may be imposed in the event that transporters do not meet the requirements of this chapter.

(i) At Type VIII facilities, only used and scrap tires free of any other type of waste are allowed to be accepted.

§330.135. Facility Operating Hours.

(a) A site operating plan must specify the waste acceptance hours and the facility operating hours when materials will be transported on or off site, and the hours when heavy equipment may operate. The waste acceptance hours of a municipal solid waste facility may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved in the authorization for the facility. Waste acceptance hours within the 7:00 a.m. to 7:00 p.m. weekday span do not require other specific approval. Transportation of materials and heavy equipment operation must not be conducted between the hours of 9:00 p.m. to 5:00 a.m., unless otherwise approved in the authorization for the facility. Operating hours for other activities do not require specific approval.

(b) In addition to the requirements of subsection (a) of this section, the permit may include alternative operating hours of up to five days in a calendar-year period to accommodate special occasions, special purpose events, holidays, or other special occurrences.

(c) The commission's regional offices may allow additional temporary waste acceptance or operating hours to address disasters, other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area.

(d) A facility must record in the site operating record the dates, times, and duration when any alternative operating hours are utilized.

§330.141. Easements and Buffer Zones.

(a) Easement protection. No solid waste unloading, storage, disposal, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the site. No solid waste disposal shall occur within 25 feet of the center line of any utility line or pipeline easement, unless otherwise authorized by the executive director. All pipeline and utility easements must be clearly marked with posts that extend at least six feet above ground level, spaced at intervals no greater than 300 feet.

(b) Buffer zones. A minimum separating distance shall be maintained between solid waste processing and disposal activities within and adjacent to the facility boundary on property owned or controlled by the owner or operator as determined by the requirements of §330.543 of this title (relating to Easements and Buffer Zones). The buffer zone must provide for safe passage for fire-fighting and other emergency vehicles.

§330.143. Landfill Markers and Benchmark.

(a) The owner or operator must maintain the visibility of all required landfill markers and the benchmark. The owner or operator shall inspect landfill markers on a monthly basis and maintain records of all inspections at the facility. The owner or operator shall replace markers within 15 days of removal, destruction, or a determination that the markers do not meet regulatory requirements.

(b) Landfill markers must be installed to clearly mark significant features. The executive director may modify specific marker requirements to accommodate unique site-specific conditions.

(1) All markers must be posts extending at least six feet above ground level. Markers must not be obscured by vegetation. Sufficient intermediate markers must be installed to show the required boundary. Markers must be installed at the following locations and color coded as follows:

(A) black--facility boundary markers;

(B) yellow--buffer zone markers;

(C) green--easement and rights-of-way markers;

(D) white--landfill grid system markers;

(E) red--soil liner or geomembrane liner area markers; and

(F) blue--100-year flood protection markers.

(2) Facility boundary markers must be placed at each corner of the facility and along each boundary line at intervals no greater than 300 feet. Fencing may be placed within these markers as required.

(3) Markers identifying the buffer zone must be placed along each buffer zone boundary at all corners and between corners at intervals of no greater than 300 feet. Placement of the landfill grid markers may be made along a buffer zone boundary.

(4) Easement and right-of-way markers must be placed along the centerline of an easement and along the boundary of a right-of-way at each corner within the facility and at the intersection of the facility boundary.

(5) A landfill grid system must be installed at all solid waste landfill facilities unless written approval from the executive director has been received. The grid system must encompass at least the area expected to be filled within the next three-year period. Although grid markers must be maintained during the active life of the facility, post-closure maintenance of the grid system is recommended, but not required. Markers must be spaced no greater than 100 feet apart measured along perpendicular lines. Where markers cannot be seen from opposite boundaries, intermediate markers must be installed, where feasible.

(6) Soil liner or geomembrane liner area markers must be placed so that all areas for which a soil liner evaluation report or geomembrane liner evaluation report has been submitted are readily determinable. Such markers are to provide facility workers immediate knowledge of the extent of constructed disposal areas. These markers must be located so that they are not destroyed during operations until operations extend into the next constructed area. The location of these markers must be tied into the landfill grid system and must be reported on each soil liner evaluation report or geomembrane liner evaluation report submitted. Area markers must not be placed inside constructed areas.

(7) Flood protection markers must be installed for any area within a solid waste disposal facility that is within the 100-year floodplain. The area subject to flooding must be clearly marked by means of permanent posts not more than 300 feet apart or closer if necessary to retain visual continuity.

(8) A permanent benchmark must be established at the facility in an area of the facility that is readily accessible and will not be used for disposal. This benchmark must be a bronze survey marker set in concrete and must have the benchmark elevation and survey date stamped on it. The benchmark elevation must be surveyed from a known United States Coast and Geodetic Survey benchmark or other reliable benchmark.

§330.145. Materials Along the Route to the Site.

A facility owner or operator shall take steps to encourage that vehicles hauling waste to the facility are enclosed or provided with a tarpaulin, net, or other means to effectively secure the load in order to prevent the escape of any part of the load by blowing or spilling. The owner or operator shall take actions such as posting signs, reporting offenders to proper law enforcement officers, adding surcharges, or similar measures. On days when the facility is in operation, the owner or operator shall be responsible for at least once per day cleanup of waste materials spilled along and within the right-of-way of public access roads serving the facility for a distance of two miles in either direction from any entrances used for the delivery of waste to the facility. The facility operator shall consult with the Texas Department of Transportation, county, and/or local governments with maintenance authority over the roads concerning cleanup of public access roads and rights-of-way. An alternative clean-up frequency and distance may be approved in the site operating plan.

§330.157. Endangered Species Protection.

A facility and the operation of the facility must not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species. Facilities must be operated in conformance with any endangered or threatened species protection plan required by the commission. The site operating plan should contain criteria for the protection of any identified endangered species.

§330.161. Oil, Gas, and Water Wells.

(a) The facility operator shall provide written notification to the executive director of the location of any and all existing or abandoned water wells situated within the facility upon discovery during the course of facility development. The facility operator shall, within 30 days of such a discovery, provide the executive director with such notification and written certification that such wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the commission or other state agency. Any water well used for supply at the facility may remain in use as long as it is located outside the waste footprint, it is not impacted by landfill operations, it can be demonstrated that well design and installation will prevent any cross-contamination from the waste management unit to the water well production zone and between any water bearing zones, and an approved sampling plan to include frequency and parameters is in place. The executive director shall approve any well used to supply water at the facility that is located within the permit boundary.

(b) The facility operator shall provide written notification to the executive director of the location of any and all existing or abandoned on-site crude oil or natural gas wells, or other wells associated with mineral recovery that are under the jurisdiction of the Railroad Commission of Texas. The facility owner or operator shall provide the executive director with written notification of the location of any such well within 30 days after discovery during the course of facility development. Within 30 days after plugging of any such well, the facility operator shall provide the executive director with written certification that these wells have been properly capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas. Producing crude oil or natural gas wells that do not affect or hamper landfill operations may be operated within the facility boundary, if identified in the permit for the facility or in a written notification to the executive director.

(c) Any water or other type of wells under the jurisdiction of the commission must be plugged in accordance with all applicable state requirements or additional requirements imposed by the executive director. A copy of the well plugging report required to be submitted to the appropriate state agency must also be submitted to the executive director within 30 days after the well has been plugged.

(d) The facility operator or owner shall submit for executive director approval a permit modification application identifying any proposed changes to the liner installation plan as a result of any well abandonment.

§330.165. Landfill Cover.

(a) Daily cover for Type I and Type IAE landfills. Type I and IAE landfills must apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day to control disease vectors, fires, odors, windblown litter or waste, and scavenging, unless the executive director requires a more frequent interval to control disease vectors, fires, odors, windblown litter or waste, and scavenging. Landfills that operate on a 24-hour basis must cover the working face or active disposal area at least once every 24 hours. The executive director may require a chemical analysis of any landfill cover material. Runoff from areas that have intact daily cover is not considered as having come into contact with the working face or leachate.

(b) Daily cover for Type IV and Type IVAE landfills. All Type IV facilities must follow the requirements of this section except the rate of cover must be no less than weekly, unless the executive director approves another schedule. The executive director may require a chemical analysis of any landfill cover material. Runoff from areas that have intact weekly cover is not considered as having come into contact with the working face or leachate.

(c) Intermediate cover. All areas that have received waste but will be inactive for longer than 180 days must provide intermediate or final cover. This intermediate cover must include six inches of suitable earthen material that is capable of sustaining native plant growth and must be seeded or sodded following its application in order to control erosion, or must be a material approved by the executive director that will otherwise control erosion. This intermediate cover must not be less than 12 inches of suitable earthen material. The intermediate cover must be graded to prevent ponding of water. Plant growth or other erosion control features must be maintained. Runoff from areas that have intact intermediate cover is not considered as having come into contact with the working face or leachate.

(d) Alternative daily cover. Alternative daily cover may only be allowed by a temporary authorization under §305.70(m) of this title (relating to Municipal Solid Waste Permit and Registration Modifications) followed by a major amendment or a modification in accordance with §305.70(k)(1) of this title. Use of alternative daily cover is limited to a 24-hour period after which either waste or daily cover as defined in subsection (a) of this section must be placed.

(1) An alternative daily cover operating plan must be included in the request for temporary authorization or in a site development plan that includes the following:

(A) a description and minimum thickness of the alternative material to be used;

(B) its effect on vectors, fires, odors, and windblown litter and waste;

(C) the application and operational methods to be utilized at the site when using this alternative material;

(D) chemical analysis of the material and/or the Material Safety Data Sheet(s) for the alternative material; and

(E) any other pertinent characteristic, feature, or other factors related to the use of this alternative material.

(2) A status report on the alternative daily cover must be submitted on a two-month basis to the executive director during the temporary authorization period describing the effectiveness of the alternative material, any problems that may have occurred, and corrective actions required as a result of such problems. If no unresolved problems have occurred within the temporary authorization period, status reports may no longer be required.

(3) Alternative daily cover must not be allowed when the landfill is closed for a period greater than 24 hours, unless the executive director approves an alternative length of time.

(4) For contaminated soil proposed to be used as alternative daily cover in a municipal solid waste landfill, the constituents of concern shall not exceed the concentrations listed in Table 1, Constituents of Concern and Their Maximum Leachable Concentrations, located in §335.521(a)(1) of this title (relating to Appendices). Additionally, the contaminated soil must not contain:

(A) polychlorinated biphenyl wastes that are subject to the disposal requirements of 40 Code of Federal Regulations Part 761; or

(B) total petroleum hydrocarbons in concentrations greater than 1,500 milligrams per kilogram. The owner or operator may submit a demonstration for executive director approval that material exceeding 1,500 milligrams per kilogram (mg/kg) total petroleum hydrocarbons can be a suitable alternative daily cover. The demonstration shall include information regarding the risk to human health and the environment and the information required in paragraph (1) of this subsection. If approved, the executive director may impose additional permit requirements regarding the use of this material.

(5) Alternative daily cover must not exceed constituent limitations imposed on waste authorized to be disposed at the facility.

(6) The executive director may require the owner or operator to test runoff from areas that have alternative daily cover for compliance with Texas Pollutant Discharge Elimination System storm water discharge limits or manage the runoff as contaminated water.

(e) Temporary waiver. The executive director may grant a temporary waiver from the requirements of subsections (a) - (d) of this section if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(f) Final cover. Final cover for the landfill must be in accordance with the site closure plan and Subchapter K of this chapter (relating to Closure and Post-Closure).

(g) Erosion of cover. Erosion gullies or washed-out areas deep enough to jeopardize the final or intermediate cover must be repaired within five days of detection by restoring the cover material, grading, compacting, and seeding unless the commission's regional office approves otherwise, based on the extent of the damage requiring more time to repair or the repairs are delayed because of weather conditions. An eroded area is considered to be deep enough to jeopardize the final or intermediate cover if it exceeds four inches in depth as measured from the vertical plane from the erosion feature and the 90-degree intersection of this plane with the horizontal slope face or surface. The date of detection of erosion and date of completion of repairs, including reasons for any delays, must be documented in the cover inspection record required under subsection (h) of this section. The site operating plan must establish a frequency, and identify other occasions, for conducting inspections of the final and intermediate covers to detect the need for repairs. The periodic inspections and restorations are required during the entire operational life and for the post-closure maintenance period.

(h) Cover inspection record. Each landfill must keep a cover application record on site readily available for inspection by commission representatives and authorized agents or employees of local governments having jurisdiction. This record must specify the date cover (no exposed waste) was accomplished, how it was accomplished, and the last area covered. This applies to daily, intermediate, and alternative daily cover. For final cover, this record must specify the area covered,

the date cover was applied, and the thickness applied that date. Each entry must be certified by the signature of the on-site supervisor that the work was accomplished as stated in the record. The cover inspection record must document inspections required under subsection (g) of this section, the findings, and corrective action taken when necessary.

§330.169. Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills.

Acceptance of waste in enclosed containers or enclosed vehicles at Type IV landfills must be in accordance with the following requirements.

(1) Waste in enclosed containers or enclosed vehicles must not be accepted at a Type IV landfill unless all of the following conditions have been met.

(A) The landfill to receive the waste must be participating in the funding program to monitor these activities as detailed in paragraph (2) of this section.

(B) Each enclosed container or enclosed vehicle must have all required approvals and/or permits from the executive director in accordance with §330.7 of this title (relating to Permit Required).

(C) Enclosed containers or enclosed vehicles must only be accepted at their designated time and on the specified day in accordance with this section, commission permits, or other orders of the commission.

(D) A commission inspector shall be on site and shall witness the unloading process to ensure that no putrescible waste or household waste is present. Any waste considered non-allowable by the inspector must be removed from the working face and subsequently from the facility in accordance with §330.133 of this title (relating to Unloading of Waste).

(E) Each transporter delivering waste in enclosed containers or enclosed vehicles must, prior to discharging the load, provide to the landfill operator a transporter trip ticket for the route being delivered. Trip tickets must be maintained as part of the operating record.

(F) The commission may revoke a transporter's authorization to deliver waste to a Type IV landfill for failure to comply with this chapter.

(2) The executive director shall determine the approximate annual costs of implementing and maintaining the surveillance and enforcement of all the activities associated with the acceptance of enclosed containers or enclosed vehicles at Type IV landfills.

(A) Notification of these costs will be provided to each affected holder of a Type IV landfill permit with notice of public hearing to apportion these costs.

(B) The public hearing will be held at a location to be determined by the commission with at least a 20-day advance notice. Notice will be provided to Type IV landfill operators by regular and certified mail.

(C) The public hearing will be for the purpose of establishing the total compensation and expenditures required to administer this program and the apportionment of those costs to the Type IV landfill operators to be reimbursed to the commission.

(D) Unless authorized by the executive director, the apportioned monthly payments will be due by the tenth day of each month.

(E) The apportioned costs to each Type IV landfill may be altered periodically to add or subtract landfills from the program. A 30-day notice will be provided to each participating Type IV landfill and/or proposed additional landfill and a hearing will be held, upon request, by one of the affected parties or on the commission's own motion.

(3) A Type IV landfill operator who is delinquent in making the monthly payment shall immediately halt acceptance of waste in enclosed containers or enclosed vehicles and may also be subject to other penalties allowable under state law.

(4) Stationary compactors permitted in accordance with §330.7 of this title (relating to Permit Required) and municipalities having transporter routes permitted in accordance with §330.7 of this title are exempt from the requirements of paragraphs (1) - (3) of this section. However, the landfill operator shall obtain from the transporter a hauler trip ticket for a municipal transporter route or stationary compactors, as appropriate, prior to allowing discharge of the material at the landfill. These trip tickets must be maintained as a part of the operating record.

§330.171. Disposal of Special Wastes.

(a) Type IV and Type IVAE landfills may accept special wastes consistent with the limitations established in §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and the waste acceptance plan required by §330.61(b) of this title (relating to Contents of Part II of the Application).

(b) The acceptance and/or disposal of a special waste as defined in §330.3 of this title (relating to Definitions), that is not specifically identified in subsection (c) or (d) of this section, or in §330.173 of this title (relating to Disposal of Industrial Wastes), requires prior written approval from the executive director.

(1) Approvals will be waste-specific and/or site-specific and will be granted only to appropriate facilities operating in compliance with this chapter.

(2) Requests for approval to accept special wastes must be submitted by the generator to the executive director or to a facility with an approved plan and must include, but are not limited to, the following:

(A) a complete description of the chemical and physical characteristics of each waste, a statement as to whether or not each waste is a Class 1 industrial waste as defined in §330.3 of this title, and the quantity and rate at which each waste is produced and/or the expected frequency of disposal;

(B) for Class 1 industrial solid waste, a hazardous waste determination as required by §335.6(c) of this title (relating to Notification Requirements);

(C) an operational plan containing the proposed procedures for handling each waste and listing required protective equipment for operating personnel and on-site emergency equipment; and

(D) a contingency plan outlining responsibility for containment and cleanup of any accidental spills occurring during the delivery and/or disposal operation.

(3) A vacuum truck, as used in this section, refers to any vehicle that transports liquid waste to a solid waste disposal or processing facility. A vacuum truck must transport liquid waste to a landfill that has a sludge stabilization and solidification process or to a Type V processing facility for sludge, grease trap, or grit trap waste. The owner or operator shall submit written notification to the executive director of the liquids-processing activity as required in §330.11 of this title (relating to Notification Required).

(4) Soils contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligram per kilo-

gram (mg/kg) total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1, Constituents of Concern and Their Maximum Leachable Concentrations in §335.521(a)(1) of this title (relating to Appendices) must be disposed in dedicated cells that meet the requirements of §330.331(e) of this title (relating to Design Criteria).

(5) The executive director may authorize the receipt of special waste with a written concurrence from the owner or operator; however, the facility operator is not required to accept the waste.

(6) The executive director may revoke an authorization to accept special waste if the owner or operator does not maintain compliance with these rules or conditions imposed in the authorization to accept special waste.

(c) Receipt of the following special wastes does not specifically require written authorization for acceptance provided the waste is handled in accordance with the noted provisions for each waste.

(1) Medical wastes that have not been treated in accordance with the procedures specified in Subchapter Y of this chapter (relating to Medical Waste Management) must not be accepted at a landfill unless authorized in writing by the executive director. The executive director may provide this authorization when a situation exists that requires disposal of untreated medical wastes in order to protect the human health and the environment from the effects of a natural or man-made disaster.

(2) Dead animals and/or slaughterhouse waste may be accepted at any Type I or Type IAE landfill without further approval from the executive director provided the carcasses and/or slaughterhouse waste are covered by three feet of other solid waste or at least two feet of earthen material immediately upon receipt.

(3) Regulated asbestos-containing material (RACM) as defined in 40 Code of Federal Regulations Part 61 may be accepted at a Type I or Type IAE landfill in accordance with subparagraphs (A) - (I) of this paragraph provided the landfill has been authorized to accept RACM. The facility operator proposing to accept RACM shall provide written notification to the executive director of the intent to accept RACM.

(A) To receive authorization to accept RACM, the owner or operator shall dedicate a specific area or areas of the landfill to receive RACM and shall provide written notification to the executive director of the area or areas to be designated for receipt of RACM. After initial authorization to receive RACM is issued, additional areas may be designated by providing written notice to the executive director.

(B) The location of the area designated to receive the RACM must be surveyed and marked by a registered professional land surveyor and identified on a current site diagram that is maintained at the landfill. A copy of the current site diagram identifying the RACM area must be submitted to the executive director immediately upon completion of the diagram. The operator shall maintain a record of each load of RACM accepted as to its location, depth, and volume of material.

(C) Upon closure of the unit that accepted RACM, a specific notation that the facility accepted RACM must be placed in the deed records for the facility with a diagram identifying the RACM disposal areas. Concurrently, a notice of the deed recordation and a copy of the diagram identifying the asbestos disposal areas must be submitted to the executive director.

(D) Delivery of the RACM to the landfill unit must be coordinated with the on-site supervisor so the waste will arrive at a time it can be properly handled and covered.

(E) RACM must only be accepted at the facility in tightly closed and unruptured containers or bags or must be wrapped with at least six-mil polyethylene.

(F) The bags or containers holding the RACM must be placed below natural grade level. Where this is not possible or practical, provisions must be made to ensure that the waste will not be subject to future exposure through erosion or weathering of the intermediate and/or final cover. RACM that is placed above natural grade must be located in the landfill unit such that it is, at closure of the landfill unit, not less than 20 feet from any final side slope of the unit and must be at least ten feet below the final surface of the unit.

(G) The bags or containers holding the RACM must be carefully unloaded and placed in the final disposal location. The RACM must be covered immediately with 12 inches of earthen material or three feet of solid waste containing no asbestos. Care must be exercised in the application of the cover so that the bags or containers are not ruptured.

(H) A contingency plan in the event of accidental spills (e.g., ruptured bags or containers) shall be prepared by the owner or operator prior to accepting RACM. The plan must specify the responsible person(s) and the procedure for the collection and disposal of the spilled material.

(I) RACM that has been designated as a Class 1 industrial waste may be accepted by a Type I landfill authorized to accept RACM provided the RACM waste is handled in accordance with the provisions of this paragraph and the landfill operator complies with the provisions of §330.137(g) - (i) of this title (relating to Site Sign).

(4) Nonregulated asbestos-containing materials (non-RACM) may be accepted for disposal at a Type I, Type IAE, Type IV, or Type IVAE landfill provided the wastes are placed on the active working face and covered in accordance with this chapter. Under no circumstances may any material containing non-RACM be placed on any surface or roadway that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(5) Empty containers that have been used for pesticides, herbicides, fungicides, or rodenticides must be disposed of in accordance with subparagraphs (A) and (B) of this paragraph.

(A) These containers may be disposed of at any landfill provided that:

(i) the containers are triple-rinsed prior to receipt at the landfill;

(ii) the containers are rendered unusable prior to or upon receipt at the landfill; and

(iii) the containers are covered by the end of the same working day they are received.

(B) Those containers for which triple-rinsing is not feasible or practical (e.g., paper bags, cardboard containers) may be disposed of under the provisions of paragraph (6) of this subsection or in accordance with §330.173 of this title, as applicable.

(6) Municipal hazardous waste from a conditionally exempt small quantity generator may be accepted at a Type I or Type IAE landfill without further approval from the executive director provided the amount of waste does not exceed 220 pounds (100 kilograms) per

month per generator, and provided the landfill owner or operator authorizes acceptance of the waste.

(7) Sludge, grease trap waste, grit trap waste, or liquid wastes from municipal sources can be accepted at a Type I or Type IAE landfill for disposal only if the material has been, or is to be, treated or processed and the treated/processed material has been tested, in accordance with Test Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (United States Environmental Protection Agency Publication Number SW-846), as amended, and is certified to contain no free liquids. Prior to treatment or processing of this waste at the landfill, the owner or operator shall submit written notification to the executive director of the liquids processing activity as required in §330.11 of this title.

(d) Used oil filters from internal combustion engines must not be intentionally and knowingly accepted for disposal at landfills permitted under this chapter except as provided in paragraphs (1) and (2) of this subsection.

(1) Used oil filters must not be offered for disposal by a generator and/or be intentionally and knowingly accepted for landfill disposal unless the filter has been:

(A) crushed to less than 20% of its original volume to remove all free-flowing used oil; or

(B) processed by a method other than crushing to remove all free-flowing used oil. A filter is considered to have been processed if:

(i) the filter has been separated into component parts and the free-flowing used oil has been removed from the filter element by some means of compression in order to remove free-flowing used oil;

(ii) the used filter element of a filter consisting of a replaceable filtration element in a reusable or permanent housing has been removed from the housing and pressed to remove free-flowing used oil; or

(iii) the housing is punctured and the filter is drained for at least 24 hours.

(2) Used oil filters (to include filters that have been crushed and/or processed to remove free-flowing used oil) must not be offered for landfill disposal by any non-household generator and must not be intentionally or knowingly accepted by any landfill permitted and regulated under this chapter.

§330.173. Disposal of Industrial Wastes.

(a) Except as specified in subsection (c) of this section, Class 1 industrial solid waste shall not be disposed in a Type IAE landfill unit.

(b) Generators shall manifest Class 1 industrial solid waste as required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Owners or operators of municipal solid waste landfill facilities shall not accept such wastes without prior written approval from the executive director and specific authorization in the permit.

(c) Wastes that are Class 1 only because of asbestos content may be accepted at any Type I or Type IAE landfill that is authorized to accept regulated asbestos-containing material (RACM) as stated in §330.171(c)(3)(I) of this title (relating to Disposal of Special Wastes). Authorization to accept this waste is implied in the authorization to accept RACM unless the acceptance of industrial wastes is prohibited by the permit. All Class 1 industrial asbestos wastes must be manifested and the owner or operator of the landfill facility shall comply with the requirements of subsections (g) - (i) of this section.

(d) Unless the facility permit authorizes the acceptance of a specified type of Class 1 industrial waste, an authorization to accept specific types of Class 1 wastes will be waste-specific and site-specific and will be granted only to appropriate facilities that are operating in compliance with this chapter. Requests for authorization to accept Class 1 solid wastes must be submitted in writing to the executive director and must include, but are not limited to, the following:

(1) a complete description of the chemical and physical characteristics of the waste in accordance with §335.587 of this title (relating to Waste Analysis), a statement as to whether or not the waste is a hazardous waste as defined in §330.3 of this title (relating to Definitions), and the quantity and rate at which the waste is produced and/or the expected frequency of disposal;

(2) an operational plan containing the proposed procedures for handling the waste and a listing of required protective equipment for operating personnel and on-site emergency equipment. This plan must become a part of the site operating plan; and

(3) a written contingency plan meeting the requirements of §335.589 of this title (relating to Contingency Plan). This plan shall become a part of the site operating plan.

(e) Unless specifically authorized by the facility permit, a Type I or Type IAE landfill facility permitted after October 9, 1993, may not accept Class 1 industrial solid wastes in excess of 20% of the total amount of waste (not including Class 1 wastes) accepted during the current or previous year. The amount of waste may be determined by volume or by weight, but the same unit of measure must be used for each year, unless a variance is authorized by the executive director.

(f) Any authorization to accept Class 1 waste is subject to the site operating in compliance with these rules and any specific conditions required under any letter(s) of authorization. Failure to operate the site in compliance with these rules or any special conditions imposed by the executive director may result in revocation of the authorization to accept a Class 1 waste.

(g) All shipments of Class 1 waste must be accompanied by a manifest (waste-shipping control ticket) as required by the commission. The facility operator or a designated representative shall sign the manifest for any authorized shipments of Class 1 waste. The facility operator shall not accept or sign for shipments of Class 1 waste for which the authorization to accept has not been granted by the executive director or has not been authorized by permit provisions. The facility operator shall retain the disposal facility copy of the manifest for a period of three years. This time period is automatically extended if any enforcement action involving the owner, operator, or landfill facility is initiated or pending by the executive director.

(h) A facility that accepts any Class 1 waste must submit to the executive director a written report of Class 1 waste received. This report must be submitted no later than the 25th day of the month following the month that the waste was received. Reports must be submitted on forms provided by the commission and must include all information required. Monthly reports must be submitted by facilities that have received Class 1 wastes including those months in which no Class 1 waste is received at the facility unless an exception is granted by the executive director. Failure to submit the reports required by this subsection in a timely manner is a violation of these rules.

(i) Class 2 industrial solid waste, except special wastes as defined in §330.3 of this title, may be accepted at any Type I or Type IAE landfill provided the acceptance of this waste does not interfere with facility operation. Type IV and Type IVAE landfills may accept Class

2 industrial solid waste consistent with the limitations established in §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and the waste acceptance plan required by §330.61(b) of this title (relating to Contents of Part II of the Application).

(j) Class 3 industrial solid waste may be disposed of at a Type I, Type IAE, Type IV, or Type IVAE landfill provided the acceptance of this waste does not interfere with facility operation.

§330.177. Leachate and Gas Condensate Recirculation.

The owner or operator may recirculate leachate or gas condensate derived from a landfill unit into a Type I landfill unit at the same facility if the Type I landfill unit is designed and constructed with a leachate collection system and a composite liner. The owner or operator shall make the procedure for leachate or gas condensate recirculation a part of the site operating plan. The owner or operator is not required to characterize leachate and gas condensate that is being recirculated into an approved Type I landfill unit. The owner or operator is not required to characterize leachate and gas condensate sent to a publicly owned treatment works or Resource Conservation and Recovery Act authorized facility beyond that required by the treatment facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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SUBCHAPTER E. PERMIT PROCEDURES

30 TAC §§330.50 - 330.66, 330.70 - 330.73, 330.75

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. OPERATIONAL STANDARDS FOR MUNICIPAL SOLID WASTE STORAGE AND PROCESSING UNITS

30 TAC §§330.201, 330.203, 330.205, 330.207, 330.209, 330.211, 330.213, 330.215, 330.217, 330.219, 330.221, 330.223, 330.225, 330.227, 330.229, 330.231, 330.233, 330.235, 330.237, 330.239, 330.241, 330.243, 330.245, 330.247, 330.249

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.201. Applicability.

(a) This subchapter applies to the operation of municipal solid waste storage and processing units. If separate authorizations are required to conduct storage and processing activities at a permitted landfill facility, those activities are subject to this subchapter and the commission may reconcile any conflicting site operating plan provisions between this subchapter and Subchapter D of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities).

(b) Permits and registrations for units that existed before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) became effective remain valid, except as provided by this subchapter. The permittee or registrant is under an obligation to apply for a modification within 180 days, unless approved otherwise by the executive director, in accordance with §305.70(k) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the 2006 Revisions. The application will be processed as a modification requiring public notice and any subsequent applications will be processed in accordance with Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits). Timely submission of a request for a modification qualifies the owners or operators of existing units to operate under requirements contained in the existing authorization.

§330.203. Waste Acceptance and Analysis.

(a) The owner or operator shall identify the sources and characteristics of wastes (e.g., residential, commercial, grease trap, grit trap, sludges, septage, special wastes, Class 1, Class 2, or Class 3 industrial solid wastes, compost feedstocks) proposed to be received for storage or processing. Municipal solid waste facilities may not receive regulated hazardous waste, unless authorized in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). If a waste constituent or characteristic could be a limiting parameter that may impact or influence the design and operation of the facility, the owner or operator shall specify parameter limitations of each type of waste to be managed by the facility that may include constituent concentrations and characteristics such as pH, fats, oil and grease concentrations, total suspended solids, chemical oxygen demand, biochemical oxygen demand, organic and metal constituent concentrations, water content, or other constituents.

(b) The owner or operator shall determine types and an estimate of the amount of each waste to be received daily; the maximum amount of waste to be stored at any one point in time; the maximum and average lengths of time that waste is to remain at the facility; the maximum and average waste processing times; and the intended destination of the solids and liquids generated by a facility. If applicable, a narrative must be included that describes how 10% of the incoming waste will be recovered and its intended use.

(c) For solid waste processing and experimental facilities, the following requirements apply.

(1) The owner or operator shall establish the method of sampling and analysis for the effluent discharged to a trap, interceptor, or treatment facility permitted under Texas Water Code, Chapter 26. At a minimum, the method of sampling, the frequency of sampling, and the tests to be made shall be part of the sampling and analysis plan. All sampling and analysis shall be done according to approved United States Environmental Protection Agency (EPA) methods. Records shall be maintained for a three-year period.

(2) At a minimum, analyses for wastes received shall be made for benzene, lead, and total petroleum hydrocarbons (TPH). Grit trap wastes must be analyzed annually for biochemical oxygen demand, total suspended solids, benzene, TPH, and lead. Sludges that are disposed of at a municipal solid waste landfill must be analyzed annually for benzene, lead, and TPH. At a minimum, effluent from the facility must be analyzed annually for TPH, fats, oil and grease, and pH. Records of each analysis shall be maintained at the facility for a minimum of three years. All sampling and analysis shall be done according to EPA-approved methods.

§330.205. Facility-Generated Wastes.

(a) The operator of a storage or processing facility shall specify the characteristics and constituent concentrations of wastes generated by the facility. The owner or operator must be able to provide documentation that all wastes leaving the facility can be adequately managed by other facilities, licensed or permitted by the appropriate agencies to receive such wastes, at the volumes and concentrations estimated in the facility design.

(b) Wastes generated by a facility must be processed or disposed at an authorized solid waste management facility.

(c) Wastewaters generated by a facility shall be managed in accordance with §330.207 of this title (relating to Contaminated Water Management).

(d) The facility shall be designed and operated in a manner that sludges produced pass the Paint Filter Liquids Test, (United States Environmental Protection Agency (EPA) Method 9095) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846, September 1986). The facility shall be designed and operated to produce a sludge that is acceptable at municipal solid waste landfills and does not exceed the following standards. Sludges exceeding these limits shall not be disposed in municipal solid waste landfills and must be sent to an authorized facility for further processing or disposal as a hazardous waste, as appropriate or disposed in a municipal solid waste landfill with dedicated Class 1 industrial solid waste cells if the sludge is nonhazardous.
Figure: 30 TAC §330.205(d)

§330.209. Storage Requirements.

(a) All solid waste shall be stored in such a manner that it does not constitute a fire, safety, or health hazard or provide food or harborage for animals and vectors, and shall be contained or bundled so as not to result in litter. It shall be the responsibility of the occupant of a residence or the owner or manager of an establishment to utilize storage containers of an adequate size and strength, and in sufficient numbers, to contain all solid waste that the residence or establishment generates in the period of time between collections.

(b) An on-site storage area for source-separated or recyclable materials should be provided that is separate from a transfer station or process area. Control of odors, vectors, and windblown waste from the storage area shall be maintained.

(c) For the process area of transfer stations that recover material from solid waste that contains putrescibles and for liquid waste processing units, processed and unprocessed waste and recycled materials shall be stored in an enclosed building, vessel, or container.

§330.213. Citizen's Collection Stations.

(a) Citizen's collection stations shall be provided with the type and quantity of containers compatible with the areas to be served. Rules shall be posted governing the use of the facility to include who may use it, what may or may not be deposited, etc. The responsible person that owns or operates the collection center shall provide for the collection of deposited waste on a scheduled basis and supervise the facility in order to maintain it in a sanitary condition.

(b) A citizen's collection station may accept sharps from single-family or multi-family dwellings, hotels, motels, or other establishments that provide lodging and related services for the public. The

sharps will not be considered medical waste, as defined in §330.3 of this title (relating to Definitions).

§330.219. Recordkeeping and Reporting Requirements.

(a) A copy of the permit or registration, the approved permit or registration application, and any other required plan or other related document shall be maintained at the municipal solid waste facility at all times during construction. After completion of construction, an as-built set of construction plans and specifications shall be maintained at the facility or at an alternative location approved by the executive director. These plans shall be made available for inspection by agency representatives or other interested parties. These documents shall be considered a part of the operating record for the facility.

(b) The owner or operator shall promptly record and retain in an operating record, the following information:

(1) all location-restriction demonstrations;

(2) inspection records and training procedures;

(3) closure plans and any monitoring, testing, or analytical data relating to closure requirements;

(4) all cost estimates and financial assurance documentation relating to financial assurance for closure;

(5) copies of all correspondence and responses relating to the operation of the facility, modifications to the permit, approvals, and other matters pertaining to technical assistance;

(6) all documents, manifests, shipping documents, trip tickets, etc., involving special waste;

(7) any other document(s) as specified by the approved authorization or by the executive director;

(8) record retention provisions for trip tickets as required by §312.145 of this title (relating to Transporters - Record Keeping); and

(9) recordkeeping provisions to justify, on a quarterly basis, that the relevant percentage of the incoming waste is processed to recover recycled products for applicable facilities. Failure to achieve the relevant percent recycling rate in any two quarters within any one-year period will cause a change in a facility's status and require the owner or operator of the facility to obtain a registration or permit, as appropriate, to continue facility operations. The owner or operator shall submit an annual report to the executive director by March 1st summarizing the recycling activities and percent of incoming solid waste that was recycled during the past calendar year.

(c) For signatories to reports, the following conditions apply.

(1) The owner or operator shall sign all reports and other information requested by the executive director as described in §305.44(a) of this title (relating to Signatories to Applications) or by a duly authorized representative of the owner or operator. A person is a duly authorized representative only if:

(A) the authorization is made in writing by the owner or operator as described in §305.44(a) of this title;

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the owner or operator, such as the position of plant manager, environmental manager, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(C) the written authorization is submitted to the executive director.

(2) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

(3) Any person signing a report shall make the certification in §305.44(b) of this title.

(d) For permitted municipal solid waste composting and landfill mining facilities, the operator shall maintain records on-site, available for inspection by the executive director for a period consisting of the two most recent calendar years, except as noted in paragraphs (1) - (3) of this subsection. The records must consist of the following:

(1) a log of abnormal events at the facility, including, but not limited to, hazardous constituents uncovered, fires, explosions, process disruptions, extended equipment failures, injuries, and weather damage;

(2) results of final product testing required by §330.613 of this title (relating to Sampling and Analysis Requirements for Final Soil Product) or §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product); and

(3) copies of the annual report for the five most recent calendar years.

(e) All information contained in the operating record shall be furnished upon request to the executive director and shall be made available at all reasonable times for inspection by the executive director.

(f) The owner or operator shall retain all information contained within the operating record and the different plans required for the facility for the life of the facility.

(g) The executive director may set alternative schedules for recordkeeping and notification requirements as specified in subsections (a) - (e) of this section.

(h) Owners or operators of a Type V processing facility accepting delivery of untreated medical waste for which a shipping document is required under §330.1211 of this title (relating to Transporters of Untreated Medical Waste) for processing shall ensure each of the following requirements are met:

(1) a shipping document accompanies the shipment, which designates the Type V facility to receive the waste;

(2) the owner or operator signs the shipping document and immediately gives at least one copy of the signed shipping document to the transporter;

(3) the owner or operator retains one copy of the shipping document; and

(4) within 45 days after the delivery, the owner or operator sends a written or electronic copy of the shipping document to the generator that includes a statement that the medical waste was treated in accordance with 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition).

§330.225. Unloading of Waste.

(a) The unloading of solid waste shall be confined to as small an area as practical. An attendant shall be provided at all facilities to monitor all incoming loads of waste. Appropriate signs shall also be used to indicate where vehicles are to unload. The use of forced access lanes, identified by ditches, dikes, fences, or other means, shall be used

in conjunction with signs for the prevention of indiscriminate dumping. The owner or operator is not required to accept any solid waste that he/she determines will cause or may cause problems in maintaining full and continuous compliance with these sections.

(b) The unloading of waste in unauthorized areas is prohibited. The owner or operator shall ensure that any waste deposited in an unauthorized area will be removed immediately and disposed of properly.

(c) The unloading of prohibited wastes at the municipal solid waste facility shall not be allowed. The owner or operator shall ensure that any prohibited waste will be returned immediately to the transporter or generator of the waste.

§330.229. Operating Hours.

(a) A site operating plan must specify the operating hours. The waste acceptance hours may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved by the executive director or commission for a permit. The operating hours for operating heavy equipment and transporting materials on- or off-site may be any time between the hours of 5:00 a.m. and 9:00 p.m., Monday through Friday, unless otherwise approved in the authorization. Other activities do not require specific approval. For facilities that do not require a permit or registration, the owner or operator will notify adjacent landowners by first-class mail concurrently with filing the request for expanded waste acceptance or operating hours with the commission's regional office 30 days prior to the proposed implementation of the expanded hours. The notice will contain instructions for adjacent landowners to contact the commission's regional office in writing of any concerns regarding the requested expanded waste acceptance or operating hours. The owner or operator may not begin operating during the expanded hours unless written approval is received by the regional office.

(b) In addition to the requirements of subsection (a) of this section, the authorization may include alternative operating hours of up to five days in a calendar-year period to accommodate special occasions, special purpose events, holidays, or other special occurrences.

(c) The commission's regional offices may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area.

(d) The facility must record, in the site operating record, the dates, times, and duration when any alternative operating hours are utilized.

§330.233. Control of Windblown Material and Litter.

(a) Windblown material and litter shall be collected as necessary, at least once per day on days that the facility is in operation, to minimize unhealthy, unsafe, or unsightly conditions.

(1) A portable fence may be employed to confine windblown material resulting from unloading. If a portable fence is not practical, other suitable practices shall be employed to control windblown material.

(2) Litter scattered throughout the facility, along fences and access roads, and at the gate must be picked up once a day on the days the facility is in operation and properly managed.

(b) If a facility is not completely enclosed, the owner or operator shall provide a wire or other type fencing or screening when necessary to minimize windblown materials.

§330.235. Materials Along the Route to the Facility.

The facility owner or operator shall take steps to encourage that vehicles hauling waste to the facility are enclosed or provided with a tarpaulin, net, or other means to effectively secure the load in order to prevent the escape of any part of the load by blowing or spilling. The owner or operator shall take actions such as posting signs, reporting offenders to proper law enforcement officers, adding surcharges, or similar measures. On days when the facility is in operation, the owner or operator shall be responsible for at least once per day cleanup of waste materials spilled along and within the right-of-way of public access roads serving the facility for a distance of two miles in either direction from any entrances used for the delivery of waste to the facility. The facility operator shall consult with the Texas Department of Transportation, county, and/or local governments with maintenance authority over the roads concerning cleanup of public access roads and rights-of-way. An alternative clean-up frequency and distance may be approved by the executive director.

§330.245. Ventilation and Air Pollution Control.

(a) Air emissions from municipal solid waste facilities must not cause or contribute to a condition of air pollution as defined in the Texas Clean Air Act.

(b) All facilities and constructed air pollution abatement devices must obtain authorization, under Chapter 116 of this title (relating to Control of Air Pollution By Permits for New Construction or Modifications) or Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations), as applicable, from the Air Permits Division prior to the start of construction, except as authorized in Texas Health and Safety Code, §382.004, Construction While Permit Application Pending.

(c) All liquid waste and solid waste shall be stored in odor-retaining containers and vessels.

(d) The facility shall be designed and operated to provide adequate ventilation for odor control and employee safety. The owner or operator shall prevent nuisance odors from leaving the boundary of the facility. If nuisance odors are found to be passing the facility boundary, the facility owner or operator may be required to suspend operations until the nuisance is abated.

(e) All air pollution emission capture and abatement equipment or equivalent technology shall be properly maintained and operated during the facility operation. Cleaning and maintenance of the abatement equipment shall be performed as recommended by the manufacturer and as necessary so that the equipment efficiency can be adequately maintained.

(f) The owner or operator shall employ one or more of the following measures:

(1) air scrubber units for odor control;

(2) on-site buffer zones for odor control. Consideration should be given to additional buffer zones within the facility property boundary for odor control;

(3) additional waste handling procedures, storage procedures, and clean-up procedures for odor control when accepting putrescible waste; or

(4) alternative ventilation and odor control measures.

(g) Process areas that recover material from solid waste that contains putrescibles shall be maintained totally within an enclosed building. Openings to the process area shall be controlled to prevent releases of nuisance odors from leaving the property boundary of the facility.

(h) The facility shall be designed to allow a minimal time of exposure of liquid waste to the air. Openings to processing buildings

shall be controlled to prevent release of nuisance odors to the atmosphere. The facility design must minimize waste contact with air during unloading of liquid waste into the facility.

(i) Cleaning and maintenance of mobile waste processing unit equipment shall be performed each day of operation to reduce odors.

(j) Reporting of emissions events shall be made in accordance with §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) and reporting of scheduled maintenance shall be made in accordance with §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(k) Any ponded water at the facility shall be controlled to avoid its becoming a nuisance. In the event that objectionable odors do occur, appropriate measures shall be taken to alleviate the condition.

§330.247. Health and Safety.

Facility personnel will be trained in the appropriate sections of the facility's health and safety plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. OPERATIONAL STANDARDS FOR SOLID WASTE LAND DISPOSAL SITES

30 TAC §§330.111 - 330.139

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. ANALYTICAL QUALITY ASSURANCE AND QUALITY CONTROL

30 TAC §§330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277, 330.279, 330.281, 330.283, 330.285, 330.287, 330.289

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.261. Applicability and Purpose.

(a) This subchapter applies to municipal solid waste facilities submitting laboratory data and analyses for use in commission decisions regarding any matter under the commission's jurisdiction relating

to permits or other authorizations, compliance matters, enforcement actions, or corrective actions. Owners and operators of municipal solid waste facilities shall apply to modify permits to comply with the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) to this subchapter within 180 days of the 2006 Revisions becoming effective. The permittee or registrant is under an obligation to apply for a modification not subject to public notice in accordance with §305.70(l) of this title (relating to Municipal Solid Waste Permit and Registration Modifications) to remove any inconsistent provisions. To the extent that a requirement has been changed by the 2006 Revisions, the facility may continue to operate under requirements contained in previously issued authorizations until a final decision is made on the modification application. This subchapter expires on January 1, 2009.

(b) The goal of a quality assurance (QA) and quality control (QC) program is to establish appropriate field and laboratory sampling and analysis procedures for all tested analytes to ensure proper collection preparation, and analysis of representative samples of waste, soil, water, and other media, and evaluate completeness, correctness, and conformance or compliance of a specific data set against method, procedural, or contractual requirements. To achieve accuracy (correctness) and completeness, the owner or operator shall adopt acceptable data quality standards and ensure that all sample collection, preparation and analyses, and data management activities are conducted in accordance with the standards. These activities shall be reviewed regularly to ensure compliance with the standards. QC checks must be performed and corrective action taken when indicated.

(c) The owner or operator shall evaluate the QC results supplied to the executive director to ensure compliance with program and/or permit-specific data quality standards and discuss the analytical quality of each specific data set as stated in all approved work plans, permit or registration provisions, enforcement order provisions, and applicable federal and state guidance documents.

§330.269. Matrix Spikes and Matrix Spike Duplicates.

(a) The owner or operator shall ensure that matrix spikes and matrix spike duplicate sample recovery percentages and relative percent differences for each matrix and analyte are included in the data package. If analytes are not specified for a project or if only a subset of the project analytes are evaluated with matrix spikes and matrix spike duplicates, the owner or operator shall ensure that the subset include analytes representative of the chemical properties of the project analytes of concern.

(b) The owner or operator shall ensure that each matrix spike and matrix spike duplicate test report include the spike concentration added to the sample for each matrix spike, the measured concentration of the analyte in the unspiked sample, the measured concentration of the analyte in both the matrix spike and matrix spike duplicate, the calculated percentage matrix spike/matrix spike duplicate recoveries and relative percent difference, and the laboratory and/or method quality control limits (acceptance criteria) for both matrix spike/matrix spike duplicate recovery and relative percent difference. The data set must also include the laboratory batch number and the laboratory identification number of the sample spiked.

(c) The owner or operator shall ensure that the laboratory perform matrix spikes at a minimum frequency of one out of every 20 samples per matrix type, except for analytes for which spiking solutions are not available (e.g., total dissolved solids, total volatile solids, total solids, pH, color, temperature, or dissolved oxygen).

(d) When results of the matrix spikes and matrix spike duplicate are outside of the acceptable limits, the owner or operator shall arrange for the laboratory to check other quality control results (e.g., laboratory control sample), and if appropriate, have the laboratory qualify the results or use another analytical method. The results of the matrix spikes and matrix spike duplicate are sample and matrix-specific and may not normally be used to determine the validity of the entire batch of samples.

§330.281. Chain of Custody.

(a) Chain of custody forms are used to document custody of the samples during collection, transport, and initial receipt of samples at the analytical laboratory. A laboratory may also use chain of custody forms to document the movement and analysis of samples within the laboratory. The owner or operator shall ensure that the laboratory submit all data packages with completed field chain of custody forms and other documentation, including the following:

(1) field sample identification;

(2) date and time of sample collection;

(3) preservation type;

(4) analytical methods requested and/or analytes requested;

(5) signatures of all personnel with custody prior to receipt by the laboratory;

(6) signature of laboratory personnel taking custody samples; and

(7) date and time of custody transfers.

(b) The owner or operator shall ensure that the laboratory document if samples are received outside of the recommended holding times for a particular analyte or method.

(c) The owner or operator shall ensure that upon receipt, the condition of the sample, including any abnormalities or departures from standard conditions as prescribed in the relevant test method be recorded.

(d) All samples that require thermal preservation shall be considered acceptable if the arrival temperature is either within 2 degrees Celsius of the required temperature or the method specified range. For samples requiring thermal preservation to 4 degrees Celsius, a temperature ranging from just above the freezing temperature of water to 6 degrees Celsius shall be acceptable.

(e) The owner or operator shall ensure that the laboratory have procedures for checking the chemical preservation using readily available techniques prior to or during sample preparation or analysis.

(f) The owner or operator shall ensure that the laboratory store samples according to the conditions specified by preservation protocols.

§330.285. Analytical Method Detection Limits and Method Performance.

(a) The owner or operator shall ensure that the laboratory determine detection limits by the protocol in the mandated test method or applicable federal or state regulation. The owner or operator shall ensure that the laboratory utilize a test method that provides a detection limit that is appropriate and relevant for the intended use of the data and establish procedures to relate method detection limits with the practical quantitation limits.

(b) The owner or operator shall ensure that all samples are analyzed according to methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (United States Environmental Protection Agency Publication Number SW-846) (September 1986) 3rd Edition, as revised and updated, or by other methods accepted by the executive director. If the protocol for determining detection limits

is not specified in the test method, the selection of a procedure must reflect instrument limitations and the intended application of the test method. Whenever possible, analytical methods must have method detection levels that are one-fifth to one-third of the regulatory action level.

(c) The owner or operator shall take particular care to review all quality control data within the data package for compliance with the municipal solid waste program. All laboratory data and analyses submitted for use in commission decisions regarding any matter under the executive director's jurisdiction must include information regarding precision, bias, and accuracy. The executive director shall evaluate compliance with the quality assurance objectives on a case-by-case basis.

(d) Maximum quality control acceptance limits for organic analyses are limits that represent the level of quality control data necessary to support decision making by the owner or operator with regard to sample results. Data with quality control results outside of the quality control limits should be flagged in the data package with explanation of problems encountered by the laboratory and the corrective action(s) attempted to resolve the analytical problems.

(e) Failure to meet the quality control goals in accordance with the data quality standards of the study does not necessarily mean the data are unusable. The owner or operator shall ensure that the laboratory document all corrective action associated with the analysis and maintain all records.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. OPERATIONAL STANDARDS FOR SOLID WASTE PROCESSING AND EXPERIMENTAL SITES

30 TAC §§330.150 - 330.159, 330.171

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

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SUBCHAPTER G. SURFACE WATER DRAINAGE

30 TAC §§330.301, 330.303, 330.305, 330.307

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.301. Applicability.

Permits and registrations for units that existed before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) to this subchapter became effective remain valid, except as provided by this subchapter. If existing authorizations do not comply with the 2006 Revisions, the permittee or registrant is under an obligation to apply for a modification not subject to public notice in accordance with §305.70(l) of this title (relating to Municipal Solid Waste Permit and Registration Modifications) within 180 days to comply with the 2006 Revisions to this subchapter. Timely submission of an application to modify qualifies the owners or operators of existing units to operate under requirements contained in the existing authorization until a final decision is made on the application.

§330.305. Additional Surface Water Drainage Requirements for Landfills.

(a) Existing or permitted drainage patterns must not be adversely altered.

(b) The owner or operator shall design, construct, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during the peak discharge from at least a 25-year rainfall event.

(c) The owner or operator shall design, construct, and maintain a runoff management system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(d) The landfill design must provide effective erosional stability to top dome surfaces and external embankment side slopes during all phases of landfill operation, closure, and post-closure care in accordance with the following.

(1) Estimated peak velocities for top surfaces and external embankment slopes should be less than the permissible non-erodible velocities under similar conditions.

(2) The top surfaces and external embankment slopes of municipal solid waste landfill units must be designed to minimize erosion and soil loss through the use of appropriate side slopes, vegetation, and other structural and nonstructural controls, as necessary. Soil erosion loss (tons/acre) for the top surfaces and external embankment slopes may be calculated using the Soil Conservation Service of the United States Department of Agriculture's Universal Soil Loss Equation, in which case the potential soil loss should not exceed the permissible soil loss for comparable soil-slope lengths and soil-cover conditions.

(e) Dikes, embankments, drainage structures, or diversion channels sized and graded to handle the design runoff must be provided. The slopes of the sides and toe will be graded in such a manner as to minimize the potential for erosion. The surface water protection and erosion control practices must maintain low non-erodible velocities, minimize soil erosion losses below permissible levels, and provide long-term, low maintenance geotechnical stability to the final cover.

(1) The owner or operator shall maintain the collection, drainage, and/or storage units as designed, and shall restore and repair the drainage system in the event of washout or failure; and

(2) The owner or operator shall control erosion and sedimentation, including having interim controls for phased development.

(f) The owner or operator shall assess the existing and proposed drainage characteristics of the facility using the following methods.

(1) Calculations for areas of 200 acres or less must follow the rational method and utilize appropriate surface runoff coefficients, as specified in the Texas Department of Transportation (TxDOT) Bridge Division Hydraulic Design Manual. Time of runoff concentration as defined within the manual generally will not be less than ten minutes for rainfall intensity determination purposes. The owner or operator may use equivalent or better methods approved by the executive director.

(2) Calculations for discharges from areas greater than 200 acres must be computed by using United States Geological Survey/Department of Transportation Federal Highway Administration hydraulic equations compiled by the United States Geological Survey and the TxDOT (TxDOT Administrative Circular 36-86); the Hydrologic Engineering Center-Hydrologic Modeling System, Hydraulic Engineering Center-River Modeling System, or legacy computer programs developed through the Hydrologic Engineering Center of the United States Army Corps of Engineers; or equivalent or better methods approved by the executive director.

(g) The owner or operator shall handle, store, treat, and dispose of surface or groundwater that has become contaminated by contact with the working face of the landfill or with leachate in accordance with §330.207 of this title (relating to Contaminated Water Management). Storage areas for this contaminated water must be designed with regard to size, locations, and methods.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. GROUNDWATER PROTECTION DESIGN AND OPERATION

30 TAC §§330.200 - 330.206

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small

Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

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SUBCHAPTER H. LINER SYSTEM DESIGN AND OPERATION

30 TAC §§330.331, 330.333, 330.335, 330.337, 330.339, 330.341

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.337. Special Liner Design Constraints.

(a) At the discretion of the executive director, owners or operators of Type IV landfill excavations that extend below the seasonal high water table may be required to meet one or more provisions in this section.

(b) The owner or operator of a Type I landfill shall demonstrate that the liner system will not undergo uplift from hydrostatic forces during its construction by using one or more of the following methods:

(1) providing calculations satisfactory to the executive director that the weight of the liner systems, including any ballast, is sufficient to offset by a factor of 1.2 any otherwise unbalanced upward or inward hydrostatic forces on the liner;

(2) incorporating an active or passive dewatering system in the design to reduce upward or inward hydrostatic forces on the liner by a factor of 1.2 and by providing calculations satisfactory to the executive director that the dewatering system will perform to adequately reduce those forces;

(3) providing evidence satisfactory to the executive director that the soil surrounding the landfill is so poorly permeable that groundwater cannot move sufficiently to exert force that would damage the liner; or

(4) providing evidence that the seasonal high water table is below the deepest planned excavation.

(c) The owner or operator shall ensure that the liner is stable during the filling and operation of the landfill through a suitable combination of dewatering and/or ballast, if determined to be required in subsection (b) of this section. These methods shall not be used without prior approval of the executive director.

(d) Any required leachate collection system shall be designed to handle both the leachate generated and the groundwater inflow from materials beneath and lateral to the liner system. The maximum volume of groundwater inflow shall be calculated based on determination of the permeability and potentiometric conditions of the liner system and of the materials surrounding the liner system.

(e) Prior to excavating any unit below the seasonal high water table, the owner or operator shall perform a preliminary foundation evaluation satisfactory to the executive director. The foundation evaluation shall consider stability, settlement, and constructability.

(f) The liner quality control plan as required in §330.339 of this title (relating to Liner Quality Control Plan) shall include the following information for landfills to which subsection (b) of this section is applicable:

(1) the methods and tests to be used to verify that the liner will not undergo uplift during construction and until ballast placement, if required, is complete; and

(2) the measures and tests that will be used to verify that any required ballast meets the criteria established, including, but not limited to, inspections, compaction, weight and density of material, thickness, and top elevations.

(g) Any dewatering systems used to ensure liner stability during construction and filling shall be operated until the executive director determines that such systems are no longer required.

(h) The executive director may determine on a site-specific basis that waste can be used as ballast. If so, the facility operating plan for the landfill shall contain the following requirements.

(1) The first five feet or the total thickness of the ballast, whichever is less, placed on the liner system shall be free of brush and

large bulky items, which would damage the underlying parts of the liner system or which cannot be compacted to the required density.

(2) If waste is used for ballast, a wheeled compactor having a minimum weight of 40,000 pounds, or equivalent equipment, shall be properly utilized to reach a compaction density of at least 1,200 pounds per cubic yard. For purposes of determining the required ballast thickness, a density of compacted waste of 1,200 pounds per cubic yard shall be used. The weight of the liner system, including any ballast, must be sufficient to offset any unbalanced upward or inward hydrostatic forces on the liner by a factor of 1.5 when waste is used for ballast.

(3) The liner quality control plan shall also include the method(s) to be used to verify that compaction of waste used for ballast is to a density of not less than 1,200 pounds per cubic yard. If a compactor having a minimum weight of 40,000 pounds is used, no compaction density verification will be required.

(4) If waste is used for ballast, the ballast evaluation report shall also include verification that a compactor having a minimum weight of 40,000 pounds was used or, if not, that compaction was at least 1,200 pounds per cubic yard.

(i) The seasonal high water table shall be adjusted upward, if necessary, as additional data become available after a permit is issued.

(j) If ballasting or dewatering is used, the owner or operator shall submit a ballast evaluation report in a format specified by the executive director in duplicate to the executive director when the owner or operator determines that ballasting or dewatering is no longer necessary. If the executive director provides no response within 14 days of the date of receipt, the owner or operator may discontinue dewatering or ballasting operations. The ballast evaluation report shall include:

(1) verification that the liner did not undergo uplift during construction, using the method identified in the liner quality control plan;

(2) certification that ballast met the criteria established in this section and in the liner quality control plan; and

(3) signature and seal of an independent licensed professional engineer performing the evaluation and signature of the facility operator or his authorized representative.

§330.339. Liner Quality Control Plan.

(a) A landfill must have an approved liner quality control plan prepared under the direction of a licensed professional engineer, and it shall be the basis for the type and rate of quality control testing performance and reported in the soil liner evaluation report as required in §330.341 of this title (relating to Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report). The plan must be included in the site development plan to provide operating personnel adequate procedural guidance for assuring continuous compliance with groundwater protection requirements. The plan must specify construction methods employing good engineering practices for compaction of clay soils to form a liner. Unless alternative construction procedures are approved in writing by the executive director, all constructed liners shall be keyed into an underlying formation of sufficient strength to ensure stability of the constructed lining. The plan shall address the installation and testing of a geomembrane liner, if used. Proposed dewatering plans shall be included. The plan shall include the following information:

(1) constructed liner details, where applicable, shall be depicted on cross-sections of a typical cell showing the slope, widths, and thicknesses for compaction lifts. The amount of compaction shall be expressed as a percentage of a predetermined laboratory density; and

(2) soil and liner quality-control testing procedures, to include sampling frequency, shall be included in the plan. All field sampling and testing, both during construction and after completion, shall be performed by a person acting in compliance with the provisions of the Texas Engineering Practice Act and other applicable state laws and regulations. The professional of record who signs the soil liner evaluation report or his representative should be on site during all liner construction. Quality control of construction and quality assurance of sampling and testing procedures should follow the latest technical guidelines of the executive director.

(b) The liner quality control plan shall also:

(1) provide guidance needed for testing and reporting evaluation procedures to the professional who will prepare the soil liner evaluation reports for the facility;

(2) specify materials, equipment, and construction methods for the compaction of clay soils to form impermeable liners for the conditions to include the following information:

(A) details for the overexcavation and recompaction of the in-situ soils, or the compaction of soils from a borrow source, shall be depicted on cross-sections of a typical cell showing the slope, widths, and thicknesses for compaction lifts; and

(B) procedures to be followed when excavations, cells, or disposal areas extend into or have the potential to extend into the groundwater shall be in accordance with the provisions provided in §330.337 of this title (relating to Special Liner Design Constraints); and

(3) describe installation methods and quality control testing and reporting following placement for any geomembrane liner that may be required or authorized by the executive director.

(c) Soil liner quality control testing frequencies and procedures shall be in accordance with the executive director's most recent guidelines and the following.

(1) All field sampling and testing, both during construction and after completion of the lining, shall be performed by a qualified professional experienced in geotechnical engineering and/or engineering geology, or under his direct supervision.

(2) All liners should have continuous on-site inspection during construction by the professional of record or his designated representative.

(3) The amount of compaction of clay liners shall be expressed as a percentage of a maximum dry density based on a compaction test specified by a licensed professional engineer. The compaction of the clay liner shall have been proven by soils laboratory testing to provide a coefficient of permeability of 1×10^{-7} centimeters per second (cm/sec) or less.

(4) The liner quality control plan shall define the frequency of testing for each of the test procedures listed in subparagraphs (A) - (F) of this paragraph. These frequencies shall be expressed in numbers of tests per specific area of liner per lift or specific thickness of liner, unless an alternative frequency is approved by the executive director. In addition, unless otherwise approved by the executive director, all soil tests performed on any in-situ or constructed soil liners shall be in accordance with the standards in subparagraphs (A) - (E) of this paragraph:

(A) laboratory permeability tests. Permeability tests shall be run using tap water or .05 Normal (N) solution of calcium sulfate ($CaSO_4$) and not distilled water. All test data must be submitted on permeability tests regardless of test method used. At a minimum, the calculations of the last data set reported for each sample and the resultant coefficient of permeability shall be reported as supporting data.

Tests shall be either constant head with back pressure (Appendix VII of Corps of Engineers Manual, EM 1110-2-1906; American Society of Testing and Materials (ASTM) D5084, "Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter,") or falling head (Appendix VII of Corps of Engineers Manual, EM1110-2-1906);

(B) sieve analysis +1, 200, -200 sieves; (ASTM D422 or ASTM D1140, as applicable);

(C) Atterberg limits (ASTM D4318);

(D) moisture-density relationships (ASTM D698 or any executive director approved modified test whose compactive effort matches the on site-construction equipment);

(E) moisture content (ASTM D2216); and

(F) thickness verification.

(5) All soils used as constructed liners must have the following minimum values verified by testing in a soils laboratory:

(A) plasticity index--equal to or greater than 15;

(B) liquid limit--equal to or greater than 30;

(C) percent passing 200 mesh sieve (-200) equal to or greater than 30%;

(D) percent passing one-inch screen--100%; and

(E) coefficient of permeability less than or equal to 1 x 10^{-7} cm/sec.

(6) Permeability tests for proving the suitability of soils to be used in constructing clay liners shall be performed in the laboratory using the procedures and guidance of paragraph (4)(A) of this subsection. Field quality control must be provided by field density tests based on predetermined moisture-density compaction curves, Atterberg limits, and laboratory permeabilities of undisturbed field samples of compacted liner soils, unless an alternative plan is approved by the executive director.

(7) Field permeability testing of in-situ soils or constructed soil liners shall be in accordance with ASTM D5093 for those soil liners that are in the floor of the excavation and a variation of the Boutwell STEI field permeability test approved by the executive director for the sidewalls, or in accordance with guidance furnished by the executive director.

(8) All quality control testing of soil liners shall be performed during the construction of the liner. In no instance shall any quality control field or laboratory testing be undertaken after completion of liner construction, except for that testing which is required of the final constructed lift, confirmation of liner thickness, or cover material thickness.

(9) All soil testing and evaluation of either in-situ soil or constructed soil liners shall be complete prior to installing the leachate collection system or, if no leachate collection system is required, prior to adding the one foot of protective cover on the area under evaluation.

(d) Soil and liner density shall be expressed as a percentage of the maximum dry density and at the corresponding optimum moisture content specified as appropriate by a licensed professional engineer experienced in geotechnical engineering. These soils so compacted must upon testing either in the laboratory or as a test pad in the field demonstrate a coefficient of permeability no greater than 1 x 10^{-7} cm/sec.

(e) Unless alternative construction procedures have prior written approval by the executive director, all constructed soil liners shall be keyed into an underlying formation of sufficient strength to ensure stability of the constructed lining.

(f) Each soil liner evaluation report shall be prepared in accordance with the approved liner quality control plan. Any deviation from the approved plan must have prior written approval from the executive director.

(g) Soil liners shall not be compacted with a bulldozer or any track-mobilized equipment unless it is used to pull a pad-footed roller. All soil liners shall be compacted with a pad-footed or prong-footed roller only. The maximum clod size of the compacted liner soils shall be approximately one inch in diameter. In all cases soil clods shall be reduced to the smallest size necessary to achieve the coefficient of permeability reported by the testing laboratory and to destroy any macrostructure evidenced after the compaction of the clods under density-controlled conditions.

(h) The liner soil material shall contain no rocks or stones larger than one inch in diameter or that total more than 10% by weight. Rock content shall not be a detriment to the integrity of the overlying geomembrane.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 239-0348

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SUBCHAPTER I. GROUNDWATER MONITORING AND CORRECTIVE ACTION

30 TAC §§330.230, 330.231, 330.233 - 330.242

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011,

General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. LANDFILL GAS MANAGEMENT

30 TAC §330.371

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new section implements THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new section also implements Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. CLOSURE AND POST-CLOSURE

30 TAC §§330.250 - 330.256

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. GROUNDWATER MONITORING AND CORRECTIVE ACTION

30 TAC §§330.401, 330.403, 330.405, 330.407, 330.409, 330.411, 330.413, 330.415, 330.417, 330.419, 330.421

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.401. Applicability.

(a) Facilities that have closed in accordance with §§330.453, 330.455, or 330.457 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites; Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993; or Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993) prior to the effective date of the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) may continue to monitor groundwater using the well location requirements contained in previously issued authorizations, as allowed by §330.1(a)(1) of this title (relating to Purpose and Applicability).

(b) Owners and operators of landfill units shall comply with the 2006 Revisions to this subchapter by applying for a permit modification with public notice in accordance with §305.70(l) of this title (relating to Municipal Solid Waste Permit and Registration Modifications) to revise any inconsistent permit provisions within two years from the effective date of the 2006 Revisions. If an approved groundwater sampling and analysis plan allows for filtering groundwater samples, owners or operators may continue to sample and analyze groundwater in accordance with their approved groundwater sampling and analysis plan while also collecting and analyzing unfiltered groundwater samples to reestablish background groundwater constituent concentrations. The requirements in this subchapter apply to all municipal solid waste landfill units, except for Type IAE and Type IVAE landfills as provided in §330.5(b) of this title (relating to Classification of Municipal Solid Waste Facilities) and except as provided in §330.417 of this title (relating to Groundwater Monitoring at Type IV Landfills). Additionally, the executive director may establish groundwater monitoring requirements for solid waste management units other than Type I or Type IV landfills where site-specific conditions and operations have the potential for groundwater contamination.

(c) Composting operations that require a permit are subject to the groundwater monitoring requirements of §332.47(6)(C)(ii) of this title (relating to Permit Application Preparation).

(d) Groundwater monitoring requirements under §330.403 of this title (relating to Groundwater Monitoring Systems), §330.405 of this title (relating to Groundwater Sampling and Analysis Requirements), §330.407 of this title (relating to Detection Monitoring Program for Type I Landfills), and §330.409 of this title (relating to Assessment Monitoring Program) may be suspended by the executive director for a solid waste management unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that solid waste management unit to the uppermost aquifer as defined in §330.3 of this title (relating to Definitions) during the active life and the closure and post-closure care period of the unit. This demonstration shall be certified by a qualified groundwater scientist and approved by the executive director, and must be based upon:

(1) site-specific field-collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(e) Owners or operators of new solid waste management units must submit to the executive director a documented certification signed by a qualified groundwater scientist that the facility is in compliance with the groundwater monitoring requirements specified in §§330.403, 330.405, 330.407, and 330.409 of this title before waste can be placed in the unit.

(f) Once established at a solid waste management unit, groundwater monitoring must be conducted throughout the active life and any required post-closure care period of that solid waste management unit as specified in §330.463 of this title (relating to Post-Closure Care Requirements).

§330.403. Groundwater Monitoring Systems.

(a) A groundwater monitoring system must be installed that consists of a sufficient number of monitoring wells, installed at appropriate locations and depths, to yield representative groundwater samples from the uppermost aquifer as defined in §330.3 of this title (relating to Definitions).

(1) Background monitoring wells shall be installed to allow determination of the quality of background groundwater that has not been affected by leakage from a unit. Background monitoring wells may be placed in locations that are not hydraulically upgradient of the waste management area if hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient or if sampling at other wells will provide a better indication of background groundwater quality than is possible from upgradient wells.

(2) The point of compliance monitoring system must include monitoring wells installed to allow determination of the quality of groundwater passing the point of compliance as defined in §330.3 of this title and to ensure the detection of groundwater contamination in the uppermost aquifer. Monitoring well spacing for a municipal solid waste landfill unit shall not exceed 600 feet without an applicable site-specific technical demonstration that may be supplemented with a multi-dimensional fate and transport numerical flow model as set forth in subsection (e) of this section. The owner or operator of a municipal solid waste landfill unit must install a groundwater monitoring system

at the point of compliance, as required by 40 Code of Federal Regulations §258.51(a)(2). When physical obstacles preclude installation of the groundwater monitoring wells at existing units, the wells may be installed at the closest practicable distance to the point of compliance as defined in §330.3 of this title that will ensure detection of groundwater contamination of the uppermost aquifer.

(b) The executive director may approve a multi-unit groundwater monitoring system instead of separate groundwater monitoring systems for each municipal solid waste management unit when the facility has several units, provided the multi-unit system meets the requirement of subsection (a) of this section and will be as protective of human health and the environment as individual monitoring systems for each unit, based on the following factors:

(1) number, spacing, and orientation of the solid waste management units within an overall waste management area;

(2) hydrogeologic setting;

(3) site history;

(4) engineering design of the units; and

(5) type of waste accepted at the units.

(c) The executive director may approve an alternative design for a groundwater monitoring system that uses other means in conjunction with monitoring wells to ensure detection of groundwater contamination in the uppermost aquifer from a solid waste management unit. The alternative design shall be at least as protective of human health and the environment as a monitoring-well system as specified in §330.403(a) of this title (relating to Groundwater Monitoring Systems).

(d) All parts of a groundwater monitoring system shall be operated and maintained so that they perform at least to design specifications through the life of the groundwater monitoring program.

(e) A groundwater monitoring system, including the number, spacing, and depths of monitoring wells or other sampling points, shall be designed and certified by a qualified groundwater scientist. Within 14 days of the certification, the owner or operator shall submit the certification to the executive director and place a copy of the certification in the operating record. The plan for the monitoring system and all supporting data must be submitted to the executive director for review and approval prior to construction.

(1) The design of a monitoring system shall be based on site-specific technical information that must include a thorough characterization of: aquifer thickness; groundwater flow rate; groundwater flow direction, including seasonal and temporal fluctuations in flow; effect of site construction and operations on groundwater flow direction and rates; and thickness, stratigraphy, lithology, and hydraulic characteristics of saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials of the uppermost aquifer, and materials of the lower confining unit of the uppermost aquifer. A geologic unit is any distinct or definable native rock or soil stratum.

(2) The owner or operator may use an applicable multi-dimensional fate and transport numerical flow model to supplement the determination of the spacing of monitoring wells or other sampling points and shall consider site-specific characteristics of groundwater flow as well as dispersion and diffusion of possible contaminants in the materials of the uppermost aquifer. Any model used shall:

(A) have supporting documentation that establishes its ability to represent groundwater flow and contaminant transport, as needed;

(B) have a sound set of equations based on accepted theory representing groundwater movement and contaminant transport;

(C) have numerical solution methods that are based on sound mathematical principles and supported by verification and checking techniques;

(D) be calibrated against site-specific field data;

(E) have a sensitivity analysis to measure its response to changes in the values of major parameters, error tolerances, and other parameters;

(F) show mass-balance calculations, where necessary; and

(G) be based on actual field or laboratory measurements, or equivalent methods, that document the validity of chosen parameter values.

(3) The owner or operator shall promptly notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing of changes in facility construction or operation or changes in adjacent property that affect or are likely to affect the direction and rate of groundwater flow and the potential for detecting groundwater contamination from a solid waste management unit and that may require the installation of additional monitoring wells or sampling points. Such additional wells or sampling points require a modification of the site development plan.

§330.407. Detection Monitoring Program for Type I Landfills.

(a) The monitoring frequency for all constituents listed in §330.419 of this title (relating to Constituents for Detection Monitoring) shall be at least semiannual during the active life of the facility and the closure and post-closure care period.

(1) A minimum of four statistically independent samples from each background and each point of compliance well shall be collected and analyzed for the constituents listed in §330.419 of this title to establish background groundwater quality. Initial background sampling for a well shall be completed on a quarterly basis, unless an alternative schedule is approved by the executive director. Background data sets may be updated once every two years with semiannual detection monitoring results that are demonstrated to be representative of background groundwater quality. Upon completion of background monitoring and during background updates, the owner or operator shall evaluate the background data to ensure that the data are representative of background groundwater constituent concentrations unaffected by waste management activities or other sources of contamination. The evaluation shall be documented in a report and submitted to the executive director before the next subsequent groundwater monitoring event following the updated background period. At least one sample from each background and point of compliance well shall be collected and analyzed during each subsequent semiannual sampling event.

(2) The executive director may specify an appropriate alternative frequency for repeated sampling and analysis of the constituents listed in §330.419 of this title during the active life and the closure and post-closure care period. The alternative frequency shall be no less than annual and shall be based on factors such as lithology and hydraulic conductivity of the aquifer and unsaturated zone, groundwater flow rates, minimum distance of travel from waste to monitoring wells, and resource value of the uppermost aquifer.

(3) For the purpose of establishing background groundwater quality, the executive director may agree to consider analytical data acquired prior to the effective date of this chapter in addition to the data required in this subsection and in §330.409(b) of this title (relating to Assessment Monitoring Program).

(b) Not later than 60 days after each sampling event, the owner or operator shall determine whether there has been a statistically significant increase over background of any tested constituent at any monitoring well. If there has been a statistically significant increase, the owner or operator shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing within 14 days of this determination.

(1) If a statistically significant increase over background of any tested constituent at any monitoring well has occurred, the owner or operator shall immediately place a notice in the operating record describing the increase and shall establish an assessment monitoring program meeting the requirements of §330.409 of this title within 90 days of the date of the notice to the executive director required under this subsection, except as provided for in paragraph (2) of this subsection.

(2) If a statistically significant increase over background of any tested constituent at any monitoring well has occurred, the owner or operator may submit the results of resampling as appropriate for the statistical method being used within 60 days of determining the statistically significant increase. The resample data may be used to statistically confirm or disprove the determination made in this subsection.

(3) If a statistically significant increase over background of any tested constituent at any monitoring well has occurred and the owner or operator has reasonable cause to think that a source other than a landfill unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality, then the owner or operator may submit a report providing documentation to this effect. In making a demonstration under this paragraph, the owner or operator must:

(A) notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing within 14 days of determining a statistically significant increase over background at the compliance point that the owner or operator intends to make a demonstration under this paragraph;

(B) within 90 days of determining a statistically significant increase, submit a report to the executive director, and any local pollution agency with jurisdiction that has requested to be notified, that demonstrates that a source other than a monitored landfill unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The report must be prepared and certified by a qualified groundwater scientist;

(C) not filter the groundwater sample for constituents addressed by the demonstration prior to laboratory analysis. The executive director may also require the owner or operator to provide analyses of the landfill leachate to support the demonstration; and

(D) continue to monitor in accordance with the detection monitoring program established under this section.

(4) If the owner or operator does not make a demonstration satisfactory to the executive director within 90 days after the date of the notice to the executive director required under this subsection, the owner or operator shall initiate an assessment monitoring program as required in paragraph (1) of this subsection. The executive director may require the owner or operator to install additional wells at the point of compliance to further characterize the release.

(c) The owner or operator shall submit an annual detection monitoring report within 90 days after the facility's last groundwater monitoring event in a calendar year that must include the following information determined since the previously submitted annual report:

(1) a statement regarding whether a statistically significant increase has occurred over background values in any well during the previous calendar year period and the status of any statistically significant increase events;

(2) the results of all groundwater monitoring, testing, and analytical work obtained or prepared under the requirements of this permit, including a summary of background groundwater quality values, groundwater monitoring analyses, statistical calculations, graphs, and drawings;

(3) the groundwater flow rate and direction in the uppermost aquifer. The groundwater flow rate and direction of groundwater flow shall be established using the data collected during the preceding calendar year's sampling events from the monitoring wells of the detection monitoring program. The owner or operator shall also include in the report all documentation used to determine the groundwater flow rate and direction of groundwater flow;

(4) a contour map of piezometric water levels in the uppermost aquifer based at a minimum upon concurrent measurement in all monitoring wells. All data or documentation used to establish the contour map should be included in the report;

(5) recommendation for any changes; and

(6) any other items requested by the executive director.

(d) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, the owner or operator must, within 90 days of this determination, submit an application for a permit amendment or modification to make any appropriate changes to the program.

§330.409. Assessment Monitoring Program.

(a) Assessment monitoring is required whenever the owner or operator determines there has been a statistically significant increase over background for one or more of the constituents listed in §330.419 of this title (relating to Constituents for Detection Monitoring).

(b) Within 90 days of determining that a statistically significant increase has occurred in accordance with §330.407(b) of this title (relating to Detection Monitoring Program for Type I Landfills), and not less than annually thereafter, the owner or operator shall sample and analyze the groundwater monitoring system for the full set of constituents listed in Appendix II to 40 Code of Federal Regulations (CFR) Part 258, effective July 14, 2005, is adopted by reference. A minimum of one sample shall be collected from each point of compliance well and analyzed for the 40 CFR Part 258, Appendix II constituents during each sampling event. For any new constituent(s) detected in the point of compliance wells as a result of the complete Appendix II analysis, a minimum of four statistically independent samples from each background well shall be collected and analyzed to establish background levels for the additional constituent(s). After sampling all point of compliance wells for Appendix II constituents, the executive director may specify an appropriate subset of wells to be sampled and analyzed for the Appendix II constituents during assessment monitoring and may delete any of the Appendix II constituents for a municipal solid waste management unit if the owner or operator can document that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The executive director may specify an appropriate alternative frequency for repeated sampling and analysis for the full set of 40 CFR Part 258, Appendix II constituents required by subsection (b) of this section during the active life and the closure and post-closure care period of the unit considering the following factors:

(1) lithology and hydraulic conductivity of the aquifer and unsaturated zone;

(2) groundwater flow rates;

(3) minimum distance of travel from the waste nearest to any point of compliance monitoring well;

(4) resource value of the uppermost aquifer; and

(5) nature (fate and transport) of any constituents detected in response to this section.

(d) Not later than 60 days after each sampling event, the owner or operator shall submit to the executive director the results from the initial and subsequent sampling events required in subsection (b) of this section and also place them in the operating record. The owner or operator shall also:

(1) within 90 days of submittal of the results from a sampling event and on at least a semiannual basis thereafter, resample all wells specified by §330.403(a) of this title (relating to Groundwater Monitoring Systems) and conduct analyses for all constituents in §330.419 of this title and for those additional constituents in 40 CFR Part 258, Appendix II that are detected in response to subsection (b) of this section. The results must be submitted to the executive director not later than 60 days after the sampling event and shall also be placed in the operating record. At least one sample must be collected and analyzed from each background and point of compliance well at each sampling event. The executive director may specify an alternative monitoring frequency during the active life and the closure and post-closure care period for the constituents referred to in this paragraph. The alternative frequency during the active life and the closure and post-closure care period shall be not less than annual. The alternative frequency shall be based on consideration of the factors described in subsection (c) of this section;

(2) establish background concentrations for any additional Appendix II constituents detected in accordance with subsection (b) of this section or paragraph (1) of this subsection; and

(3) establish groundwater protection standards for all constituents in point of compliance wells detected in accordance with subsection (b) of this section or paragraph (1) of this subsection. The groundwater protection standards shall be established in accordance with subsection (h) or (i) of this section.

(e) If the concentrations of all 40 CFR Part 258, Appendix II constituents are shown to be at or below background values, using the statistical procedures in §330.405(f) of this title (relating to Groundwater Sampling and Analysis Requirements) for two consecutive sampling events, the owner or operator must notify the executive director in writing and return to detection monitoring if approved.

(f) If the concentrations of any 40 CFR Part 258, Appendix II constituents are above background values, but all concentrations are below the groundwater protection standard established under subsection (h) or (i) of this section, using the statistical procedures in §330.405(f) of this title, the owner or operator shall continue assessment monitoring in accordance with this section.

(g) Not later than 60 days after each sampling event, the owner or operator shall determine whether any 40 CFR Part 258, Appendix II constituents were detected at statistically significant levels above the groundwater protection standard established under subsection (h) or (i) of this section in any sampling event. If the groundwater protection standard has been exceeded, the owner or operator shall notify the executive director and appropriate local government officials in writing within seven days of this determination.

(1) The owner or operator shall also:

(A) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(B) install at least one additional monitoring well between the monitoring well with the statistically significant level and the next adjacent wells along the point of compliance before the next sampling event and sample these wells in accordance with subsection (d)(1) of this section;

(C) notify in writing all persons that own or occupy the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with subsection (d)(1) of this section; and

(D) initiate an assessment of corrective measures as required by §330.411 of this title (relating to Assessment of Corrective Measures) all within 90 days of the notice to the executive director.

(2) The owner or operator may demonstrate that a source other than the monitored solid waste management unit caused the contamination or that the statistically significant level resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. In making a demonstration under this paragraph, the owner or operator must:

(A) notify the executive director in writing within 14 days of determining a statistically significant level above the groundwater protection standard at the point of compliance that the owner or operator intends to make a demonstration under this paragraph;

(B) within 90 days of determining a statistically significant level above the groundwater protection standard, submit a report to the executive director that demonstrates that a source other than the monitored solid waste management unit caused the contamination or that the statistically significant level resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The report shall be prepared and certified by a qualified groundwater scientist;

(C) not filter the groundwater samples for constituents addressed by the demonstration prior to laboratory analysis. The executive director may also require the owner or operator to provide analysis of landfill leachate to support the demonstration; and

(D) continue to monitor in accordance with the assessment monitoring program established under this section.

(3) If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program required by this section and may return to detection monitoring if the 40 CFR Part 258, Appendix II constituents are at or below background as specified in subsection (e) of this section. Until a successful demonstration is made, the owner or operator shall comply with paragraph (1) of this subsection, including initiating an assessment of corrective measures.

(4) If the owner or operator determines that the assessment monitoring program no longer satisfies the requirements of this section, the owner or operator must, within 90 days, submit an application for a permit amendment or modification to make any appropriate changes to the program.

(h) The owner or operator shall establish a groundwater protection standard for each 40 CFR Part 258, Appendix II constituent detected in the point of compliance monitoring wells. The groundwater protection standard must be:

(1) for constituents for which a maximum contaminant level (MCL) has been promulgated under 40 CFR Part 141, Safe Drinking Water Act (codified), §1412, the MCL for that constituent;

(2) for constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with §330.405(d) of this title; or

(3) for constituents for which the background level is higher than the MCL identified under paragraph (1) of this subsection or health-based levels identified under subsection (i) of this section, the background concentration.

(i) The executive director may establish an alternative groundwater protection standard for 40 CFR Part 258, Appendix II constituents for which MCLs have not been established. These groundwater protection standards shall be appropriate health-based levels that satisfy either the criteria of paragraphs (1) - (4) of this subsection, inclusive or comply with paragraph (5) of this subsection:

(1) the level is derived in a manner consistent with United States Environmental Protection Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) the level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792) or equivalent;

(3) for carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the 1×10^{-4} to 1×10^{-6} range; and

(4) for systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subchapter, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation; or

(5) the level is developed in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program).

(j) In establishing groundwater protection standards under subsection (i) of this section, the executive director may consider multiple contaminants in the groundwater, exposure threats to sensitive environmental receptors, and other site-specific exposure or potential exposure to groundwater.

(k) The owner or operator shall submit an annual assessment monitoring report within 60 days after the facility's second semiannual groundwater monitoring event that includes the following information determined since the previously submitted report:

(1) a statement whether an statistically significant level above a groundwater protection standard established in subsection (h) or (i) of this section has occurred in any well during the previous calendar year period and the status of any statistically significant level events;

(2) the results of all groundwater monitoring, testing, and analytical work obtained or prepared in accordance with the requirements of this chapter, including a summary of background groundwater quality values, groundwater monitoring analyses, statistical calculations, graphs, and drawings;

(3) the groundwater flow rate and direction in the uppermost aquifer. The groundwater flow rate and direction of groundwater flow shall be established using the data collected during the preceding calendar year's sampling events from the monitoring wells of the Assessment Monitoring Program. The owner or operator shall also include in the report all documentation used to determine the groundwater flow rate and direction of groundwater flow;

(4) a contour map of piezometric water levels in the uppermost aquifer based, at a minimum, upon concurrent measurement in all monitoring wells. All data or documentation used to establish the contour map should be included in the report;

(5) recommendation for any changes; and

(6) any other items requested by the executive director.

§330.411. Assessment of Corrective Measures.

(a) Within 90 days of finding that any of the 40 Code of Federal Regulations Part 258, Appendix II constituents have been detected at a statistically significant level above the groundwater protection standards defined under §330.409(h), (i), or (j) of this title (relating to Assessment Monitoring Program), the owner or operator shall initiate an assessment of corrective measures. Such an assessment shall be completed within 180 days of initiating the assessment.

(b) The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in §330.409 of this title.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under §330.413 of this title (relating to Selection of Remedy), addressing at least the following:

(1) performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) time required to begin and complete the remedy;

(3) costs of remedy implementation; and

(4) institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy or remedies.

(d) The owner or operator shall discuss the results of the corrective measures assessment, prior to the selection of a remedy, in a public meeting with interested and affected parties. The owner or operator shall arrange for the meeting and provide notice in accordance with the provisions of §39.501(e)(3) of this title (relating to Application for Municipal Solid Waste Permit).

§330.415. Implementation of the Corrective Action Program.

(a) Based on the schedule established under §330.413(d) of this title (relating to Selection of Remedy) for initiation and completion of remedial activities, the owner or operator shall:

(1) establish and implement a corrective action groundwater monitoring program that:

(A) at least meets the requirements of an assessment monitoring program under §330.409 of this title (relating to Assessment Monitoring Program);

(B) indicates the effectiveness of the corrective action remedy; and

(C) demonstrates compliance with groundwater protection standards under subsection (f) of this section;

(2) implement the corrective action remedy selected under §330.413 of this title; and

(3) take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required under §330.413 of this title. The following factors shall be considered by an owner or operator in determining if interim measures are necessary:

(A) time required to develop and implement a final remedy;

(B) actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(C) actual or potential contamination of drinking water supplies or sensitive ecosystems;

(D) further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(E) weather conditions that may cause hazardous constituents to migrate or be released;

(F) risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(G) other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of §330.413(b) of this title are not being achieved through the remedy selected. In such cases, the owner or operator shall, with approval of the executive director, implement other methods or techniques that could practicably achieve compliance with the requirements unless the owner or operator makes the determination under subsection (c) of this section and if it is approved by the executive director. Failure to obtain approval from the executive director for the other methods and techniques does not relieve the owner or operator of the burden to implement an acceptable remedy.

(c) If the owner or operator determines that compliance with requirements under §330.413(b) of this title cannot be practically achieved with any currently available methods, the owner or operator shall:

(1) present to the executive director certification by a qualified groundwater scientist that compliance with requirements under §330.413(b) of this title cannot be practically achieved with any currently available methods;

(2) implement alternative measures, with the approval of the executive director, to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;

(3) implement alternative measures, with the approval of the executive director, for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are technically practicable and consistent with the overall objective of the remedy; and

(4) place a copy of all approved alternative measures in the operating record.

(d) All solid wastes that are managed in accordance with a remedy required under §330.413 of this title, or an interim measure required under subsection (a)(3) of this section, shall be managed in a manner that is protective of human health and the environment and that complies with applicable Resource Conservation and Recovery Act requirements.

(e) Upon implementation of a corrective action program, the owner or operator shall submit an annual corrective action report by March 1st every year that includes the following information determined since the previously submitted report:

(1) a statement regarding whether a statistically significant level above a groundwater protection standard established in §330.409(h), (i), or (j) of this title in any well during the previous calendar year period has occurred and the status of any statistically significant level events;

(2) the results of all groundwater monitoring, testing, and analytical work obtained or prepared in accordance with the requirements of this chapter, including a summary of background groundwater quality values, groundwater monitoring analyses, statistical calculations, graphs, and drawings;

(3) the groundwater flow rate and direction in the uppermost aquifer. The groundwater flow rate and direction of groundwater flow shall be established using the data collected during the preceding calendar year's sampling events from the monitoring wells of the Corrective Action Program. The owner or operator shall also include in the report all documentation used to determine the groundwater flow rate and direction of groundwater flow;

(4) a contour map of piezometric water levels in the uppermost aquifer based at a minimum upon concurrent measurement in all monitoring wells. All data or documentation used to establish the contour map should be included in the report;

(5) recommendation for any changes; and

(6) any other items requested by the executive director.

(f) Remedies selected under §330.413 of this title shall be considered complete when:

(1) the owner or operator complies with the groundwater protection standards established under §330.409(h), (i), or (j) of this title at all points within the plume of contamination that lies beyond the groundwater monitoring system established under §330.403 of this title (relating to Groundwater Monitoring Systems);

(2) compliance with the groundwater protection standards established under §330.409 (h), (i), or (j) of this title has been achieved by demonstrating that concentrations of 40 Code of Federal Regulations Part 258, Appendix II constituents have not exceeded the groundwater protection standards for a period of three consecutive years, using the statistical procedures in §330.405(f) of this title (relating to Groundwater Sampling and Analysis Requirements) and performance standards in §330.409(h), (i), or (j) of this title. The executive director may specify an alternative length of time during which the owner or operator shall demonstrate that concentrations of 40 Code of Federal Regulations Part 258, Appendix II constituents have not exceeded the groundwater protection standards. The alternative length of time shall be based on:

(A) extent and concentration of the release;

(B) behavior characteristics of the hazardous constituents in the groundwater;

(C) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(D) characteristics of the groundwater; and

(3) all actions required to complete the remedy have been satisfied.

(g) Within 15 days of completion of the remedy, the owner or operator shall submit to the executive director and also place in the operating record a certification by a qualified groundwater scientist that the remedy has been completed in compliance with the requirements of subsection (a) of this section.

(h) Upon submittal of satisfactory certification of the completion of the corrective action remedy, the executive director may release the owner or operator from the requirements for financial assurance for corrective action under §330.509 of this title (relating to Corrective Action Cost Estimates for Landfills).

§330.417. Groundwater Monitoring at Type IV Landfills.

(a) The requirements in this section apply to Type IV landfills, as defined in §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities), except as provided in §330.5(b) of this title, and in subsection (b) of this section.

(b) At the discretion of the executive director, the owner or operator of a Type IV landfill may be required to install groundwater monitoring systems and to monitor on a regular basis the quality of groundwater at the point of compliance.

(1) The factors to be considered by the executive director in determining the need for groundwater monitoring shall include: relationship of the facility to drinking water intakes (both surface and subsurface); hydrogeology of the shallow water-bearing zones in the facility area; use of shallow groundwater in the facility area; type of waste being or to be taken; types of liner; likelihood of leakage of contaminants from the facility; and protection of human health and the environment.

(2) A groundwater monitoring system shall be installed in accordance with §330.403 of this title (relating to Groundwater Monitoring Systems) except for the point of compliance monitoring well spacing requirement of §330.403(a)(2) of this title.

(3) Groundwater sampling and analysis requirements shall be in accordance with §330.405(a) - (d) of this title (relating to Groundwater Sampling and Analysis Requirements).

(4) Each monitoring well or other sampling point shall be sampled and analyzed annually, or on some other schedule but not less frequently than annually as determined by the executive director, for the following constituents: chloride, iron, manganese, cadmium, zinc, total dissolved solids, specific conductance (field and laboratory measurements), pH (field and laboratory measurements), and non-purgeable organic compounds.

(5) Not later than 60 days after each sampling event, the owner or operator shall determine whether the landfill has released contaminants to the uppermost aquifer. The owner or operator shall provide an annual detection monitoring report within 60 days after the facility's annual groundwater monitoring event that includes the following information determined since the previously submitted report:

(A) the results of all monitoring, testing, and analytical work obtained or prepared in accordance with the requirements of this permit, including a summary of background groundwater quality values, groundwater monitoring analyses, any statistical calculations, graphs, and drawings;

(B) the groundwater flow rate and direction in the uppermost aquifer. The groundwater flow rate and direction of groundwater flow shall be established using the data collected during the preceding calendar year's sampling events from the monitoring wells of the Detection Monitoring Program. The owner or operator shall also include in the report all documentation used to determine the groundwater flow rate and direction of groundwater flow;

(C) a contour map of piezometric water levels in the uppermost aquifer based at a minimum upon concurrent measurement in all monitoring wells. All data or documentation used to establish the contour map should be included in the report;

(D) recommendation for any changes; and

(E) any other items requested by the executive director.

(6) The executive director may require additional sampling, analyses of additional constituents, installation of additional monitoring wells or other sampling points, and/or other hydrogeological investigations if the facility appears to be contaminating the uppermost aquifer.

(7) If the owner or operator finds the facility to have contaminated or be contaminating the uppermost aquifer, the executive director may order corrective action appropriate to protect human health and the environment up to and including that in §§330.411, 330.413, and 330.415 of this title (relating to Assessment of Corrective Measures; Selection of Remedy; and Implementation of the Corrective Action Program).

§330.421. Monitor Well Construction Specifications.

(a) Monitoring well construction. Monitoring well construction shall provide for maintenance of the integrity of the bore hole, collection of representative groundwater samples from the water-bearing zone(s) of concern, and prevention of migration of groundwater and surface water within the bore hole. The following specifications must be used for the installation of groundwater monitoring wells at municipal solid waste landfills. Equivalent alternatives to these specifications may be used if prior written approval is obtained in advance from the executive director.

(1) Drilling.

(A) Monitoring wells must be drilled by a Texas-licensed driller who is qualified to drill and install monitoring wells. The installation and development shall be supervised by a licensed professional geoscientist or engineer who is familiar with the geology of the area.

(B) The well shall be drilled by a method that will allow installation of the casing, screen, etc., and that will not introduce contaminants into the borehole or casing. Drilling techniques used for boring shall take into account the materials to be drilled, depth to groundwater, total depth of the hole, adequate soil sampling, and other such factors that affect the selection of the drilling method. If any fluids are necessary in drilling or installation, then clean, treated city water shall be used; other fluids must be approved in writing by the executive director before use. If city water is used, a current chemical analysis of the city water shall be provided with the monitor-well report.

(C) The diameter of the boring shall be at least four inches larger than the diameter of the casing. When the boring is in hard rock, a smaller annulus may be approved by the executive director.

(D) A log of the boring shall be made by or under the supervision of a licensed professional geoscientist or engineer who is familiar with the geology of the area, and shall be sealed, signed, and dated by the licensed professional.

(2) Casing, screen, filter pack, and seals.

(A) The well casing shall be: two to four inches in diameter; National Science Foundation-certified polyvinyl chloride (PVC) Schedule 40 or 80 pipe, flush-thread, screw joint (no glue

or solvents); polytetrafluorethylene (PTFE, such as Teflon) tape or O-rings in the joints; no collar couplings. The top of the casing shall be at least two feet above ground level. Where high levels of volatile organic compounds or corrosive compounds are anticipated, stainless steel or PTFE casing and screen may be used, subject to approval by the executive director. Four-inch diameter casing is recommended because it allows larger volume samples to be obtained and provides easier access for development, pumps, and repairs. The casing shall be cleaned and packaged at the place of manufacture; the packaging shall include a PVC wrapping on each section of casing to keep it from being contaminated prior to installation. The casing shall be free of ink, labels, or other markings. The casing (and screen) shall be centered in the hole to allow installation of a good filter pack and annular seal. Centralizers are recommended on wells over six meters (20 feet) in length, but may not be needed if the wells are installed through hollow-stem augers. The top of the casing shall be protected by a threaded or slip-on top cap or by a sealing cap or screw-plug seal inserted into the top of the casing. The cap shall be vented to prevent buildup of methane or other gases and shall be designed to prevent moisture from entering the well.

(B) The screen shall be compatible with the casing and should generally be of the same material. The screen shall not involve the use of any glues or solvents for construction. A wire-wound screen is recommended to provide maximum inflow area. Field-cut slots are not permitted for well screen. Filter cloth shall not be used. A blank-pipe sediment trap, typically one to two feet, should be installed below the screen. A bottom cap is typically placed on the bottom of the sediment trap. The sediment trap shall not extend through the lower confining layer of the water-bearing zone being tested. Screen sterilization methods are the same as those for casing. Selection of the size of the screen opening should be done by a person experienced with such work and shall include consideration of the distribution of particle sizes both in the water-bearing zone and in the filter pack surrounding the screen. The screen opening shall not be larger than the smallest fraction of the filter pack.

(C) The filter pack, placed between the screen and the well bore, shall consist of prepackaged, inert, clean silica sand or glass beads; it shall extend from one to four feet above the top of the screen. Open stockpile sources of sand or gravel are not permitted. The filter pack usually has a 30% finer grain size that is about four to ten times larger than the 30% finer grain size of the water-bearing zone; the filter pack should have a uniformity coefficient less than 2.5. The filter pack should be placed with a tremie pipe to ensure that the material completely surrounds the screen and casing without bridging. The tremie pipe shall be steam cleaned prior to the first well and before each subsequent well.

(D) The annular seal shall be placed on top of the filter pack and shall be at least two feet thick. It should be placed in the zone of saturation to maintain hydration. The seal should be composed of coarse-grain sodium bentonite, coarse-grit sodium bentonite, or bentonite grout. Special care should be taken to ensure that fine material or grout does not plug the underlying filter pack. Placement of a few inches of prepackaged clean fine sand on top of the filter pack will help to prevent migration of the annular seal material into the filter pack. The seal should be placed on top of the filter pack with a steam-cleaned tremie pipe to ensure good distribution and should be tamped with a steam-cleaned rod to determine that the seal is thick enough. The bentonite shall be hydrated with clean water prior to any further activities on the well and left to stand until hydration is complete (eight to 12 hours, depending on the grain size of the bentonite). If a bentonite-grout (without cement) casing seal is used in the well bore, then it may replace the annular seal described in this paragraph.

(E) A casing seal shall be placed on top of the annular seal to prevent fluids and contaminants from entering the borehole from the surface. The casing seal shall consist of a commercial bentonite grout or a cement-bentonite mixture. Drilling spoil, cuttings, or other native materials are not permitted for use as a casing seal. Quick-setting cements are not permitted for use because contaminants may leach from them into the groundwater. The top of the casing seal shall be between five and two feet from the surface.

(3) Concrete pad. High-quality structural-type concrete shall be placed from the top of the casing seal (two to five feet below the surface) continuously to the top of the ground to form a pad at the surface. This formed surface pad shall be at least six inches thick and not less than four (preferably six) feet square or five (preferably six) feet in diameter. The pad shall contain sufficient reinforcing steel to ensure its structural integrity in the event that soil support is lost. The top of the pad shall slope away from the well bore to the edges to prevent ponding of water around the casing or collar.

(4) Protective collar. A steel protective pipe collar shall be placed around the casing "stickup" to protect it from damage and unwanted entry. The collar shall be set at least one foot into the surface pad during its construction and should extend at least three inches above the top of the well casing (and top cap, if present). The top of the collar shall have a lockable hinged top flap or cover. A sturdy lock shall be installed, maintained in working order, and kept locked when the well is not being bailed/purged or sampled. The well number or other designation shall be marked permanently on the protective steel collar; it is useful to mark the total depth of the well and its elevation on the collar.

(5) Protective barrier. Where monitoring wells are likely to be damaged by moving equipment or are located in heavily traveled areas, a protective barrier shall be installed. A typical barrier is three or four six- to 12-inch diameter pipes set in concrete just off the protective pad. The pipes can be joined by pipes welded between them, but consideration must be given to well access for sampling and other activities. Separation of such a pipe barrier from the pad means that the barrier can be damaged without risk to the pad and well. Other types of barriers may be approved by the executive director.

(b) Unusual conditions. Where monitoring wells are installed in unusual conditions, all aspects of the installation shall be approved in writing in advance by the executive director. Such aspects include, for example, the use of cellar-type enclosures for the top-well equipment or multiple completions in a single hole.

(c) Development. After a monitoring well is installed, it shall be developed to remove artifacts of drilling (clay films, bentonite pellets in the casing, etc.) and to open the water-bearing zone for maximum flow into the well. Development should continue until all of the water used or affected during drilling activities has been removed and field measurements of pH, specific conductance, and temperature have stabilized. Failure to develop a well properly may mean that it is not properly monitoring the water-bearing zone or may not yield adequate water for sampling even though the water-bearing zone is prolific.

(d) Location and elevation. Upon completion of a monitoring well, the location of the well and all appropriate elevations associated with the top-well equipment shall be surveyed by a registered professional surveyor. The elevation shall be surveyed to the nearest 0.01 foot above mean sea level (with year of the sea-level datum shown). The point on the well casing for which the elevation was determined shall be permanently marked on the casing. The location shall be given in terms of the latitude and longitude at least to the nearest tenth of a second or shall be accurately located with respect to the landfill grid system de-

scribed in §330.143(b)(5) of this title (relating to Landfill Markers and Benchmark).

(e) Reporting. Monitoring well installation and construction details must be submitted on forms available from the commission and must be completed and submitted within 60 days of well completion. A copy of the detailed geologic log of the boring, a description of development procedures, any particle size or other sample data from the well, and a site map drawn to scale showing the location of all monitoring wells and the point of compliance must be submitted to the executive director at the same time. The licensed driller should be familiar with the forms required by other agencies; a copy of those forms must also be submitted to the commission.

(f) Damaged wells. Any monitoring well that is damaged to the extent that it is no longer suitable for sampling shall be reported to the executive director, who may make a determination about whether to repair or replace the well.

(g) Plugging and abandonment. Any monitoring well that is no longer used shall be properly abandoned and plugged in accordance with 16 TAC §76.702 (relating to Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging) and §76.1004 (relating to Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones). No abandonment shall take place without prior authorization in writing by the executive director.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. CLOSURE, POST-CLOSURE, AND CORRECTIVE ACTION

30 TAC §§330.280 - 330.284

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. CLOSURE AND POST-CLOSURE

30 TAC §§330.451, 330.453, 330.455, 330.457, 330.459, 330.461, 330.463, 330.465

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.451. Applicability.

(a) The requirements in this subchapter apply to all municipal solid waste (MSW) landfill units or MSW facilities as defined in §330.5 of this title (relating to Classification of Municipal Solid Waste Facilities).

(b) The owner or operator of all existing MSW landfill units or lateral expansions at a facility who is unable to comply with §330.545 of this title (relating to Airport Safety), §330.547 of this title (relating to Floodplains), or §330.559 of this title (relating to Unstable Areas), as applicable; shall complete final closure of the unit or facility by October 9, 1996, and conduct post-closure activities in accordance with §330.463(a) of this title (relating to Post-Closure Care Requirements).

(c) The deadline for closure required by subsection (b) of this section may be extended up to two years if the owner or operator of the MSW landfill unit or MSW facility submits to the executive director for review and approval a request for an extension of the closure deadline that demonstrates to the satisfaction of the executive director that there is no alternative disposal capacity and there is no immediate threat to human health and the environment from the unclosed MSW landfill unit or MSW facility.

(d) Permits that existed before the comprehensive rule revisions of this chapter adopted in 2006 became effective remain valid subject to the requirements of §330.401(b) of this title (relating to Applicability).

§330.453. Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites.

(a) The final cover system shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of clayey soil, classification sand clayey (SC) or low plasticity clayey (CL) as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, compacted in layers of no more than six inches to minimize the potential for water infiltration. A high plasticity clayey (CH) soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director.

(b) The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded immediately following the application of the final cover in order to minimize erosion.

(c) Side slopes of the final cover for all above-ground disposal areas (aerial fills) shall not exceed a 25% grade (four feet horizontal to one foot vertical). Side slopes for the final cover in excess of 25% may be authorized by the executive director, provided that controlled drainage such as flumes, diversion terraces, spillways, or other acceptable methods are incorporated into the final cover system design in the site development plan and submitted to the executive director for review and approval. The final cover for the topmost portion of a unit or facility shall have a gradient of not less than 2.0% and not greater than 6.0%, and shall possess a sufficient minimum grade to preclude ponding of surface water when total fill height and expected subsidence are taken into consideration.

(d) The executive director may approve an alternative final cover design that:

(1) achieves an equivalent reduction in infiltration as the clayey soil cover infiltration layer specified in subsection (a) of this section; and

(2) provides equivalent protection from wind and water erosion as the topsoil layer specified in subsection (b) of this section.

(e) No later than 60 days prior to the initiation of closure activities, the owner or operator shall submit the design and specifications for the closure of these municipal solid waste (MSW) landfill units or MSW sites to the executive director for review and approval. The final cover shall be installed no later than October 9, 1993.

(f) After completion of closure, the owner or operator of these MSW landfill units or MSW sites shall comply with the post-closure care requirements for this final cover, as detailed in §330.463(a) of this title for the duration of the post-closure period for these units or sites.

§330.455. Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993.

(a) The owner or operator of these units shall comply with all final cover requirements as specified in §330.457 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993).

(b) The final cover shall be completed by October 9, 1994. Owners or operators of municipal solid waste landfill units that fail to complete final cover installation within this 180-day period will be subject to all requirements of §330.463(b) of this title (relating to Post-Closure Care Requirements) unless otherwise specified.

(c) After completion of closure, the owner or operator of these municipal solid waste landfill units or facilities shall comply with all post-closure care requirements for the final cover of these units or facilities as specified in §330.463(a) of this title.

§330.457. Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993.

(a) The owner or operator shall install a final cover system for the unit that is designed and constructed to minimize infiltration and erosion. The final cover system shall be composed of no less than two feet of soil and consist of a clay-rich soil cover layer overlain by an erosion layer as follows.

(1) For municipal solid waste landfill (MSW) units with a synthetic bottom liner, a synthetic membrane that has a permeability less than or equal to the permeability of any bottom liner system overlain by a clay-rich soil cover layer consisting of a minimum of 18 inches of earthen material with a coefficient of permeability no greater than 1×10^{-5} centimeters/second (cm/sec). The minimum thickness of the synthetic membrane shall be 20 mils, or 60 mils in the case of high-density polyethylene, in order to ensure proper seaming of the synthetic membrane.

(2) For MSW landfill units with no synthetic bottom liner, the clay-rich soil cover layer shall consist of a minimum of 18 inches of earthen material with a coefficient of permeability less than or equal to the permeability of any constructed bottom liner or natural subsoil present. The coefficient of permeability of the infiltration layer shall in no case exceed 1×10^{-5} cm/sec, even though the coefficient of permeability of the constructed bottom liner or natural subsoil is greater than 1×10^{-5} cm/sec or no data exist for the value(s) of the coefficient of permeability of the constructed bottom liner or natural subsoil.

(3) For all MSW landfill units, the erosion layer shall consist of a minimum of six inches of earthen material that is capable of sustaining native plant growth and shall be seeded or sodded immediately following the application of the final cover in order to minimize erosion.

(b) The final cover placed over a dedicated Class 1 industrial solid waste cell must consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material with a coefficient of permeability no greater than 1×10^{-7} cm/sec unless waste is to be placed on top of the Class 1 industrial solid wastes. If

waste is to be placed above Class 1 industrial solid wastes, the Class 1 industrial solid waste must first be covered with a four-foot layer of compacted clay-rich soil. The final cover over the aerial fill must meet the requirements of this subchapter and must include a flexible membrane component.

(c) Quality control testing documentation is as follows. The owner or operator shall test the 18 inches of compacted clay-rich soil cover for its coefficient of permeability at a frequency of no less than one test per surface acre of final cover. Permeability data shall be submitted to the executive director.

(d) The executive director may approve an alternative final cover design that:

(1) a cover achieves an equivalent reduction in infiltration as the clay-rich soil cover layer specified in subsection (a)(1) or (2) of this section; and

(2) provides equivalent protection from wind and water erosion as the erosion layer specified in subsection (a)(3) of this section.

(e) The owner or operator of all MSW landfill units or lateral expansions at a facility shall prepare a written closure plan that describes the steps necessary to close all MSW landfill units at any point during the active life of the unit. The closure plan, at a minimum, shall include the following information:

(1) a description of the final cover design, methods, and procedures to be used to install the cover;

(2) an estimate of the largest area of the MSW landfill unit or MSW facility ever requiring a final cover at any time during the active life of the unit or MSW facility;

(3) an estimate of the maximum inventory of wastes ever on-site over the active life of the unit or MSW facility;

(4) a schedule for completing all activities necessary to satisfy the closure criteria; and

(5) a final contour map depicting the proposed final contours, establishing top slopes and side slopes, proposed surface drainage features, and protection of any 100-year floodplain.

(f) Implementation of the closure plan is as follows.

(1) The owner or operator shall place a copy of the closure plan in the operating record by the initial receipt of waste.

(2) No later than 45 days prior to the initiation of closure activities for an MSW landfill unit, the owner or operator of the unit shall provide written notification to the executive director of the intent to close the unit and place this notice of intent in the operating record.

(3) The owner or operator of all MSW landfill units at a facility shall begin closure activities for each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. A request for an extension beyond the one-year deadline for the initiation of closure may be submitted to the executive director for review and approval and shall include all applicable documentation necessary to demonstrate that the unit has the capacity to receive additional waste and that the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the MSW landfill unit.

(4) The owner or operator of an MSW landfill unit shall complete closure activities for the unit in accordance with the approved closure plan within 180 days following the initiation of closure activities as specified in paragraph (3) of this subsection. A request for an extension for the completion of closure activities may be submitted to the executive director for review and approval and shall include all applicable documentation necessary to demonstrate that closure will, of necessity, take longer than 180 days and all steps have been taken and will continue to be taken to prevent threats to human health and the environment from the unclosed MSW landfill unit.

(5) Following completion of all closure activities for the MSW landfill unit, the owner or operator shall comply with the post-closure care requirements specified in §330.463(b) of this title (relating to Post-Closure Care Requirements). The owner or operator shall submit to the executive director by registered mail for review and approval a certification, signed by an independent licensed professional engineer, verifying that closure has been completed in accordance with the approved closure plan. The submittal to the executive director shall include all applicable documentation necessary for certification of closure. Once approved, this certification shall be placed in the operating record.

(6) Following receipt of the required closure documents, as applicable, and an inspection report from the agency's regional office verifying proper closure of the MSW landfill unit according to the approved closure plan, the executive director may acknowledge the termination of operation and closure of the unit and deem it properly closed.

(g) Within ten days after closure of all MSW landfill units, the owner and operator shall submit to the executive director by registered mail a certified copy of an "affidavit to the public" in accordance with the requirements of §330.19 of this title (relating to Deed Recordation) and place a copy of the affidavit in the operating record. In addition, the owner or operator shall record a certified notation of the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted according to the provisions specified in §330.465 of this title (relating to Certification of Completion of Post-Closure Care). The owner or operator shall submit a certified copy of the modified deed to the executive director and place a copy of the modified deed in the operating record within the time frame specified in this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. LOCATION RESTRICTIONS

30 TAC §§330.300 - 330.305

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the

management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. CLOSURE, POST-CLOSURE, AND CORRECTIVE ACTION COST ESTIMATES

30 TAC §§330.501, 330.503, 330.505, 330.507, 330.509

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.503. Closure Cost Estimates for Landfills.

(a) The owner or operator shall provide a detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the largest waste fill area that could potentially be open in the year to follow and those areas that have not received final cover in accordance with the final closure plan. For any landfill this means the completion of the final closure requirements for active and inactive fill areas. The owner or operator shall submit the cost estimate for financial assurance with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) The owner or operator shall review the facility's permit conditions on an annual basis and verify that the current active areas match the areas on which closure cost estimates are based.

(2) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes to the final closure plan or the landfill conditions increase the maximum cost of closure at any time during the remaining active life of the unit.

(3) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the unit and the owner or operator has provided written notice to the executive director of the situation that includes a detailed justification for the reduction of the closure cost estimate and the amount of financial assurance. The owner or operator may request a reduction in the cost estimate and the financial assurance as a permit modification.

(b) The owner or operator of any municipal solid waste unit shall establish financial assurance for closure of the unit in accordance with Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). Continuous financial assurance coverage for closure shall be provided until the facility is officially placed under the post-closure maintenance period and all requirements of the final closure plan have been approved as evidenced in writing by the executive director.

§330.507. Post-Closure Care Cost Estimates for Landfills.

(a) The owner or operator shall provide a detailed written cost estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care activities for the municipal solid waste unit, in accordance with the post-closure care plan. The post-closure care cost estimate used to demonstrate financial assurance in subsection (b) of this section shall account for the total costs of conducting post-closure care for the largest area that could possibly require post-closure care in the year to follow, including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. The cost estimate for financial assurance shall be submitted with any new

permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) An increase in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes in the post-closure care plan or the unit conditions increase the maximum costs of post-closure care.

(2) A reduction in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section may be allowed if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period and the owner or operator has provided written notice to the executive director of the detailed justification for the reduction of the post-closure cost estimate and the amount of financial assurance. The owner or operator may request a reduction in the cost estimate and the financial assurance as a permit modification.

(b) The owner or operator of any municipal solid waste landfill unit shall establish financial assurance for the costs of post-closure care of the unit in accordance with Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). Continuous financial assurance coverage for post-closure care shall be provided until the facility is officially released in writing by the executive director from the post-closure care period in accordance with all requirements of the post-closure care plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. LOCATION RESTRICTIONS

30 TAC §§330.541, 330.543, 330.545, 330.547, 330.549, 330.551, 330.553, 330.555, 330.557, 330.559, 330.561, 330.563

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.543. Easements and Buffer Zones.

(a) Easement protection. No solid waste unloading, storage, disposal, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the facility. No solid waste disposal shall occur within 25 feet of the center line of any utility line or pipeline easement but no closer than the easement, unless otherwise authorized by the executive director. All pipeline and utility easements shall be clearly marked with posts that extend at least six feet above ground level, spaced at intervals no greater than 300 feet.

(b) Buffer zones.

(1) Except for facilities that are authorized by a notification, the owner or operator shall maintain a minimum separating distance of 50 feet between feedstock or final product storage areas; solid waste storage, processing, Type IAE landfill units, Type IV landfill units, and Type IVAE landfill units within and adjacent to the facility boundary on property owned or controlled by the owner or operator. The buffer zone shall not be narrower than that necessary to provide for safe passage for fire fighting and other emergency vehicles. The executive director may consider alternatives to buffer zone requirements for permitted and registered storage and processing municipal solid waste facilities.

(2) For landfill permits that existed before the comprehensive rule revisions of this chapter as adopted in 2006 became effective, the owner or operator is subject to the former rules and shall establish and maintain a buffer zone in compliance with the permit. For new Type I landfills, vertical or lateral expansions of existing Type I landfills, and existing Type IAE landfills that subsequently no longer satisfy the conditions specified in §330.5(b)(1) of this title (relating to Classification of Municipal Solid Waste Facilities), the owner or operator shall establish and maintain the buffer zone prescribed by this paragraph. All buffer zones must be within and adjacent to the facility boundary on property owned or controlled by the owner or operator.

(A) For any new Type I landfill, the owner or operator shall establish and maintain a 125-foot buffer zone.

(B) For any vertical expansion, the owner or operator shall establish and maintain a 125-foot buffer zone. A vertical expansion is any height increase that exceeds the maximum permitted final contour for any cell or unit for which an increase is requested. For a vertical expansion, the buffer distance must be measured from the outermost edge of the newly permitted solid waste disposal airspace.

(C) For any lateral expansion to areas not previously permitted, the owner or operator shall establish and maintain a 125-

foot buffer zone. For a lateral expansion, the buffer distance must be measured from the edge of the horizontally expanded portion of the landfill.

(D) For vertical or lateral expansions of existing landfills, the new buffer zone requirements shall apply only to newly permitted airspace and shall not apply to any previously permitted airspace, regardless of whether or not the previously permitted airspace has been constructed or filled with solid waste. The new buffer zone may include any previously permitted airspace.

(3) The executive director may consider alternatives to buffer zone requirements in paragraph (2) of this subsection. Alternatives may be approved where the owner or operator demonstrates that:

(A) the prescribed buffer zone standard is not feasible; and

(B) there is a specific engineered design alternative that:

(i) is consistent with the performance goal of providing a visual screening of solid waste processing and disposal activities;

(ii) affords ready access for emergency response, maintenance, and monitoring;

(iii) affords equivalent control of odors and windblown waste as the prescribed buffer zone; and

(iv) provides sufficient distance to meet the drainage and sediment control requirements applicable to the facility.

§330.545. Airport Safety.

(a) Owners or operators of new municipal solid waste landfill units, existing municipal solid waste landfill units, vertical or lateral expansions, and landfill mining operations that are located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft shall demonstrate that the units are designed and operated so that the municipal solid waste landfill unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new municipal solid waste landfill units and lateral expansions located within a six-mile radius of any small general service airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration. Owners or operators proposing to site new municipal solid waste landfill units and lateral expansions located within a five-mile radius of any large general public commercial airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration.

(c) The owner or operator shall submit the demonstration in subsection (a) of this section with a permit application or a permit amendment application. The demonstration will be considered a part of the operating record once approved.

(d) Landfills disposing of putrescible waste shall not be located in areas where the attraction of birds can cause a significant bird hazard to low-flying aircraft. Guidelines regarding location of landfills near airports can be found in Federal Aviation Administration Order 5200.5(A), January 31, 1990. All landfill facilities within a six-mile radius of any small general service airport runway or within a five-mile radius of any large general public commercial airport runway shall be critically evaluated to determine if an incompatibility exists.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER N. LANDFILL MINING

30 TAC §§330.401 - 330.419

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

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Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Effective date: March 27, 2006
Proposal publication date: September 9, 2005
For further information, please call: (512) 239-0348

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30 TAC §§330.601, 330.603, 330.605, 330.607, 330.609, 330.611, 330.613, 330.615

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the

management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.603. Variances.

(a) In specific cases the executive director may approve a variance from the requirements of this subchapter due to special conditions, if the variance is not contrary to safeguarding the health, welfare, and physical property of the people and to protecting the environment. A variance may not be approved concerning the procedural requirements of this subchapter, including application procedures and the filing of reports, or concerning the provisions of §330.607 of this title (relating to Air Quality Requirements).

(b) A request for a variance must be submitted in writing to the executive director. The request may be made in an application for a registration. Any approval of a variance must be in writing from the executive director.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING AND FINANCIAL ASSISTANCE GENERAL PROVISIONS

30 TAC §§330.561 - 330.569

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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30 TAC §§330.631, 330.633, 330.635, 330.637, 330.639, 330.641, 330.643, 330.645, 330.647, 330.649

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard

permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.631. Purpose and Scope.

(a) Contents. The contents of regional and local solid waste management plans are specified in Texas Health and Safety Code, §363.064.

(b) Purpose. The sections in this subchapter are intended for use in the development of a guidance document to assist in the implementation of regional and local solid waste management plans. These sections provide the recommended content of regional and local solid waste management plans and guidance documents, provide for coordination with other programs and public participation, establish criteria for regional and local plan submission and approval, and set out criteria for financial assistance to councils of governments and local governments.

(c) Scope.

(1) General. A regional or local solid waste management plan shall conform to the requirements of Texas Health and Safety Code, §363.064, and provide the general structure to implement a regional or local program.

(2) Planning process. A regional or local solid waste management plan shall be the result of a planning process related to proper management of solid waste in the planning area under consideration. The process shall include identification of concerns and collection and evaluation of data necessary to provide a written public statement of goals and objectives, and a general statement of the actions recommended to accomplish those goals and objectives.

(3) Geographic area. A regional solid waste management plan shall consider the entire area within an identified planning region and provide an overview of the solid waste management situation throughout the region. A local solid waste management plan shall consider all of the area within the jurisdiction of one or more local governments, but shall not include an entire planning region.

(d) Regional and local solid waste management plans pending upon the effective date of the comprehensive rule revisions to this chapter as adopted in 2006 (2006 Revisions) are subject to the 2006 Revisions.

§330.633. Definitions of Terms and Abbreviations.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Advisory council--The Municipal Solid Waste Management and Resource Recovery Advisory Council.

(2) City--An incorporated city or town in the state.

(3) Closed municipal solid waste landfill unit--A discrete area of land or an excavation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including, but not limited to, construction/demolition waste, commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator hazardous waste, and industrial solid waste, and the area of land is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 Code of Federal Regulations §257.2.

(4) Council of governments--A regional planning commission created under Local Government Code, Chapter 391.

(5) Governing body--The city council, commissioners court, board of directors, trustees, or similar body charged by law with governing a public agency.

(6) Inactive facility--A facility that no longer receives solid waste.

(7) Planning fund--The municipal solid waste management planning fund created in the state treasury by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Texas Health and Safety Code, Chapter 363).

(8) Planning period--The period of time that an adopted solid waste management plan is designed to remain effective.

(9) Planning region--A region of the state identified by the governor as an appropriate region for municipal solid waste planning.

(10) Private operator--A person, other than a government or governmental subdivision or agency, engaged in some aspect of operating a solid waste management system. The term includes any entity other than a government or governmental subdivision or agency, owned and operated by investment of private capital.

(11) Property--Land, structures, interests in land, air rights, water rights, and rights that accompany interests in land, structures, water rights, and air rights and includes easements, rights of way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(12) Public agency--A city, county, district, or authority created and operating under the Texas Constitution, Article III, §52(b)(1) or (2), or Article XVI, §59, or a combination of two or more of these governmental entities acting under an interlocal agreement and having the authority under state laws to own and operate a solid waste management system.

(13) Regional or local solid waste management plan--A plan adopted by a council of governments or local government under authority of the Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Texas Health and Safety Code, Chapter 363).

(14) Regional Solid Waste Grants Program--The program established to utilize funds dedicated under Texas Health and Safety Code, §361.014, for local and regional solid waste projects and to update and maintain regional solid waste management plans.

(15) Resolution--A resolution, order, ordinance, or other action of a governing body.

(16) Solid waste management--The systematic control of any or all of the following activities:

(A) generation;

(B) source separation;

(C) collection;

(D) handling;

(E) storage;

(F) transportation;

(G) processing;

(H) treatment;

(I) resource recovery; or

(J) disposal of solid waste.

(17) Solid waste management system--Any plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment acquired, installed, or operated for the purpose of collecting, handling, storing, processing, recovering material or energy, or disposing of solid waste and includes sites for these works and equipment.

(18) Solid waste resource recovery system--Any real property, buildings, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in connection with the processing of solid waste to extract, recover, reclaim, salvage, reduce, concentrate, or convert to energy or useful matter or resources, whatever their form, including electricity, steam, or other forms of energy, and fertilizer, glass, or other forms of material and resources, from such solid waste, and includes any real property, buildings, structures, plants, works, facilities, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in:

(A) the transportation, receipt, storage, transfer, and handling of solid waste;

(B) the preparation, separation, or processing of solid waste for reuse;

(C) the handling and transportation of recovered matter, resources, or energy; and

(D) the handling, transportation, and disposal of any nonrecoverable solid waste residue.

§330.635. Regional and Local Solid Waste Management Plan Requirements.

(a) Regional solid waste management plans. A regional plan identifies the overriding concerns, goals, objectives, and recommended actions for solid waste management over a long-range period for the entire planning region. The details to implement a regional plan are provided in a Regional Solid Waste Management Implementation Plan Guideline that is approved by the executive director. A Regional Solid Waste Management Plan Implementation Guideline is a separate document. The requirements for the guidance document are found in §330.643 of this title (relating to Regional and Local Solid Waste Management Implementation Plan Guideline Requirements).

(1) Geographic scope. The geographic scope of the regional planning process shall be the entire planning region designated by the governor.

(2) Plan content. A regional plan shall be the result of a planning process related to the proper management of solid waste in the planning region. The process shall include identification of overriding concerns and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and actions recommended to accomplish those goals and objectives. The regional plan shall include:

(A) a statement of regional goals and objectives;

(B) a description and assessment of efforts to minimize, reuse, and recycle waste, as follows:

(i) include a brief description and an assessment of current efforts in the region to minimize municipal solid waste (MSW), including sludge, and efforts to reuse or recycle waste;

(ii) establish a recycling rate goal appropriate to the region;

(iii) list any recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(iv) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(v) recommend composting programs for yard waste and related organic wastes that may include:

(I) creation and use of community composting centers;

(II) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(III) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch; and

(vi) include a public education/outreach component in the solid waste program; and

(C) a commitment to the following, regarding the management of MSW facilities:

(i) encouraging cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(ii) assessing the need for new waste disposal capacity;

(iii) considering the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area;

(iv) allowing a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;

(v) completing and maintaining an inventory of MSW landfill units in accordance with Texas Health and Safety Code, §363.0635. One copy of the inventory shall be provided to the commission and to the chief planning official of each municipality and county in which a unit is located; and

(vi) developing a guidance document to review MSW registration and permit applications to determine conformance with the goals and objectives outlined in *Volume II: Regional Solid Waste Management Plan Implementation Guidelines* as referenced in §330.643 of this title.

(b) Local plans. A local plan addresses overriding short and long-range concerns and actions related to solid waste management within the jurisdiction of one or more local governments and may be developed regardless of whether a regional plan has been developed that will affect the local planning area. The details to implement a local plan are provided in a Regional Solid Waste Management Implementation Plan Guideline that is approved by the executive director. A Regional Solid Waste Management Plan Implementation Guideline is

a separate document. The requirements for the guidance document are found in §330.643 of this title.

(1) Geographic scope. The geographic scope of the local planning process shall be the jurisdiction of one or more local governments with common concerns or needs, but shall not include the entire planning region.

(2) Plan content. A local plan shall be the result of a planning process that is related to the proper management of solid waste in the local planning area. The process shall include identification of concerns and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and the actions recommended to accomplish those goals and objectives. The local plan shall include:

(A) a statement of local goals and objectives;

(B) a description and assessment of efforts to minimize, reuse, and recycle waste, as follows:

(i) include a brief description and an assessment of current efforts in the region to minimize MSW, including sludge, and efforts to reuse or recycle waste;

(ii) establish a recycling rate goal appropriate to the region;

(iii) list any recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(iv) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(v) recommend composting programs for yard waste and related organic wastes that may include:

(I) creation and use of community composting centers;

(II) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(III) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch; and

(vi) include a public education/outreach component in the solid waste program; and

(C) commitment to the following, regarding the management of MSW facilities:

(i) encouraging cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(ii) assessing the need for new waste disposal capacity;

(iii) considering the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area; and

(iv) allowing a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction.

(3) Special considerations or restrictions. The local plan shall not prohibit, in fact or by effect, importation or exportation of waste from one political jurisdiction to another.

§330.639. Public Participation Requirements for Solid Waste Plans.

(a) Advisory committee. An advisory committee shall provide input, review, and comment during development of regional and local plans. The local council of governments shall have procedures for the appointment of committee members who represent a broad range of interests, including a representative of the Texas Commission on Environmental Quality, public officials, private operators, citizen groups, and interested individuals.

(b) Governmental review. Local governments affected by regional plans shall be given opportunities for review and comment on relevant portions of the plan, including adequate notice of public meetings conducted on the plans. Local plans shall be submitted to appropriate regional planning agencies for review and comment.

(c) Public meeting. A public meeting shall be held prior to the adoption of a regional or local plan for the purpose of receiving comment from interested parties.

(d) Notice and availability. The governing body of the responsible entity shall make available to interested persons at locations of convenience planning reports and documents. Notice of availability of documents and of public meetings shall be advertised in newspapers of general circulation in the area affected by the plan. The governing body of the responsible entity shall provide proper notice a minimum of 15 days in advance of the meeting. The notice shall include the meeting time, location, and subjects to be discussed.

(e) Plan approval. Local and regional solid waste management plans shall be approved by the governing body of the responsible entity before being submitted for approval by the commission.

§330.641. Procedures for Regional and Local Plan Submission, Approval, and Distribution.

(a) Prior to the submission of a plan, the plan shall be adopted by the council of governments or local government(s) in accordance with applicable administrative procedures. Local governments shall coordinate with the appropriate council of governments and ensure that a local plan is consistent with any regional solid waste management plan in effect for the region encompassing the jurisdiction of the local government, if a regional plan has been approved by the commission.

(b) Within 90 days after a regional or local plan has been submitted, the executive director will tentatively determine if the plan conforms to this subchapter. The executive director will communicate this determination to the agency that submitted the plan. If the plan is not in conformance, a notice of deficiency will be provided to the planning agency within 30 days of the tentative disapproval. The executive director has authority to disapprove any plan that has deficiencies. Plans not approved will not be considered by the commission until the executive director determines that the deficiencies have been corrected, unless the council of governments or local government submits a request for appeal to the commission. In order for a plan to be considered under such circumstances, the appeal must be in writing and submitted to the commission within 30 days following the day the council of governments or local government receives notification of tentative plan disapproval by the executive director.

(c) If the executive director tentatively determines a regional or local plan meets the requirements of this subchapter and should be approved, the executive director will submit the plan to the commission for adoption in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. If approved, the executive director will notify the planning agency of the commission's approval.

The commission's evaluation of a regional or local plan will include whether the plan reflects consideration of the preference of municipal solid waste management methods under Texas Health and Safety Code, §361.022. In the event the plan is not approved, the commission will state the plan's deficiencies and the executive director will immediately notify the planning agency of the commission's decision and the plan's deficiencies. The plan may be resubmitted for approval if the executive director determines that deficiencies have been corrected.

(d) If a regional or local solid waste management plan is adopted by the commission, public and private solid waste management activities and state regulatory activities shall conform to the adopted regional or local solid waste management plan. The plan shall only remain in effect during the planning period defined in the plan. Under the procedures and criteria of subsections (g) and (h) of this section, the executive director may grant a variance from an adopted regional or local solid waste management plan.

(e) If a portion of a regional or local plan is determined by the executive director to no longer be in compliance with this subchapter, the executive director may request that the council of governments or local government revise the plan. If such a revision is not submitted to the executive director within 180 days, the executive director may ask the commission to withdraw its approval of that portion of the plan.

(f) A council of governments or local government may submit revisions or updates to an approved plan that reflect new information or changed conditions. Updates to an approved plan to provide for changes to data and information contained in the plan, which do not substantially change the scope or content of the goals and recommendations of the plan, may be incorporated into an approved plan upon approval by the executive director without further adoption procedures being required. Major revisions and amendments to an approved plan that substantially change the scope or content of the goals and recommendations of the plan shall be considered by the same procedures as the original plan submission and approval.

(g) Upon application, the executive director may grant a variance from an adopted regional or local solid waste management plan when:

(1) the application of the plan creates an unnecessary hardship;

(2) equally safe, effective methods could be used;

(3) practical difficulties are encountered in meeting the requirements of a plan; or

(4) deviation or exception would not affect substantial compliance with the plan and not threaten health or safety.

(h) If the executive director intends to grant a variance from the requirements of a plan, the executive director will offer the opportunity for a public meeting on the matter prior to the final decision. The meeting, if requested, will be advertised and conducted within the area affected by the plan.

(i) Upon approval of a regional plan by the commission, the council of governments shall provide a copy of the adopted plan, including the inventory of closed municipal solid waste landfill units, to the chief planning official of each municipality and county within the planning region. The council of governments will include an advisory to the chief planning official that all enclosed structures over a closed landfill must comply with Subchapter T of this chapter (relating to Use of Land Over Closed Municipal Solid Waste Landfills). The council of governments and the chief planning officials shall make the adopted regional plan available for public inspection.

§330.643. Regional and Local Solid Waste Management Implementation Plan Guideline Requirements.

(a) Regional implementation plans. A regional solid waste management plan provides the overriding structure and commitment to comply with the requirements for regional planning. A regional implementation plan provides the details to implement a regional solid waste management plan, is approved by the commission's executive director, and identifies the concerns, goals, objectives, and recommended actions for solid waste management over a long-range period for the entire planning region.

(1) Geographic scope. The geographic scope of the regional planning process shall be the entire planning region designated by the governor. It is not anticipated that the regional plan will present site-specific information. The regional implementation plan shall use the four types of planning units listed in subparagraphs (A) - (D) of this paragraph, as appropriate for the information presented:

(A) small geographic areas such as census tracts or city boundaries for the most detailed data collection and manipulation;

(B) planning areas to be used for the assessment of concerns and the evaluation of alternatives. These planning areas shall be aggregations of small geographic areas;

(C) county boundaries for the summarization and presentation of key information; or

(D) the entire planning region.

(2) Planning periods. An implementation plan should be developed based on the results of a planning process. The regional planning process shall address solid waste management over a long-range period. Long range is considered to be a period of at least 20 years. The maximum planning period addressed by the plan shall be stated on the plan cover and title page and at other appropriate locations within the body of the plan. The regional implementation plan shall use the four planning periods listed in subparagraphs (A) - (D) of this paragraph as appropriate for the information presented:

(A) current and historical information;

(B) short-range planning period, one to five years, with specific information presented by year;

(C) intermediate planning period, six to ten years, with information in less detail; or

(D) long-range planning period, 11 to 20 years or longer, with information in the least detail.

(3) Plan content. A regional implementation plan shall be the result of a planning process related to the proper management of solid waste in the planning region. The process shall include identification of concerns and collection and evaluation of the data necessary to provide a written public statement of goals and objectives, and actions recommended to accomplish those goals and objectives. The regional implementation plan shall include:

(A) population patterns, commercial and industrial data, and other demographic information necessary to estimate solid waste quantities and characteristics;

(B) estimates of current and future solid waste amounts by type;

(C) description of current and planned solid waste management activities in the region;

(D) description and assessment of the adequacy of existing resource recovery, storage, transportation, treatment, and dis-

posal facilities and practices, and programs for the collection and disposal of household hazardous wastes;

(E) assessment of current source reduction and waste minimization efforts, including sludge, and efforts to reuse or recycle waste;

(F) identification of additional opportunities for source reduction and waste minimization, and reuse or recycling of waste;

(G) recommendations for encouraging and achieving a greater degree of source reduction and waste minimization, and reuse or recycling of waste;

(H) identification of public and private management agencies and responsibilities;

(I) identification of solid waste management concerns and establishment of priorities for addressing those concerns;

(J) planning areas and agencies with common solid waste management concerns that could be addressed through joint action;

(K) identification of incentives and barriers for source reduction and waste minimization, and resource recovery, including identification of potential markets;

(L) regional goals and objectives, including waste reduction goals consistent with state goals;

(M) advantages and disadvantages of alternative actions;

(N) the recommended plan of action and associated timetable for achieving regional goals and objectives, including: waste reduction; composting programs for yard wastes and related organic wastes; household hazardous waste collection and disposal programs; public education programs; and the need for new or expanded facilities and practices; and

(O) identification of the process that will be used to evaluate whether a proposed municipal solid waste facility application will be in conformance with the regional plan.

(4) Special considerations or restrictions. The regional implementation plan shall not prohibit, in fact or by effect, importation or exportation of waste from one political jurisdiction into another.

(5) Prior approval. A regional implementation plan and any substantiative changes must be approved in advance of implementation by the Texas Commission on Environmental Quality's executive director.

(b) Local plans. A local solid waste management plan provides the overriding structure and commitment to comply with the requirements for local planning. A local implementation plan provides the details to implement a local solid waste management plan, is approved by the commission's executive director, and addresses specific short- and long-range concerns and actions related to solid waste management within the jurisdiction of one or more local governments and may be developed regardless of whether a regional plan has been developed that will affect the local planning area.

(1) Geographic scope. The geographic scope of the local planning process shall be the jurisdiction of one or more local governments with common concerns or needs, but shall not include the entire planning region. In certain cases the local plan may present site-specific information. The local implementation plan shall use the three types of planning units listed in subparagraphs (A) - (C) of this paragraph, as appropriate for the information presented:

(A) small geographic areas such as census tracts or city boundaries for the most detailed data collection and manipulation. These small areas should be the same as those used in the regional plan;

(B) planning areas to be used for the assessment of concerns and the evaluation of alternatives. These planning areas should be aggregations of the small geographic areas; or

(C) the entire area encompassed by the local plan.

(2) Planning periods. The local planning process shall address specific short and long-range concerns and actions in solid waste management. The maximum planning period addressed by the plan shall be stated on the plan cover and title page and at other appropriate locations within the body of the plan. The local implementation plan should use the planning periods listed in subparagraphs (A) - (D) of this paragraph as appropriate for the information presented:

(A) current and historical information;

(B) short-range planning period, one to five years, with specific information presented by year;

(C) intermediate planning period, six to ten years, with information in less detail; or

(D) long-range planning period, 11 to 20 years or longer.

(3) Plan content. A local implementation plan shall be the result of a planning process that is related to the proper management of solid waste in the local planning area. The process shall include identification of concerns and collection and evaluation of the data necessary to provide a written public statement of goals and objectives, and the actions recommended to accomplish those goals and objectives. The local implementation plan shall include:

(A) population and commercial and industrial data from the regional planning process, supplemented with other local demographic information as necessary;

(B) composition, characteristics, and amounts of waste, by type, that affect the local planning area;

(C) description of current and planned solid waste management activities in the local planning area;

(D) description and assessment of the adequacy of existing resource recovery, storage, transportation, treatment, and disposal facilities and practices, including programs for the collection and disposal of household hazardous wastes;

(E) identification of the short and long-range solid waste management concerns within the local planning area;

(F) assessment of current source reduction and waste minimization efforts for solid waste, including sludge, and efforts to reuse or recycle waste;

(G) identification of additional opportunities for source reduction and waste minimization, and reuse or recycling of waste;

(H) recommendations for encouraging and achieving a greater degree of source reduction and waste minimization, and reuse or recycling of waste;

(I) local goals and objectives associated with management concerns, including waste reduction goals consistent with state and regional goals;

(J) advantages and disadvantages of alternative actions;

(K) the recommended plan of action and associated timetable for accomplishing the goals and objectives, including: waste reduction; composting programs for yard wastes and related organic wastes; household hazardous waste collection programs; public education programs; and the need for new or expanded facilities or practices; and

(L) identification of the process that will be used to evaluate whether a proposed municipal solid waste facility application will be in conformance with the regional plan.

(4) Special considerations or restrictions. The local implementation plan shall not prohibit, in fact or by effect, importation or exportation of waste from one political jurisdiction to another.

(5) Prior approval. A local implementation plan and any substantiative changes must be approved in advance of implementation by the executive director.

§330.645. Financial Assistance for Regional and Local Plans.

(a) Authority. The municipal solid waste management planning fund is established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Texas Health and Safety Code, Chapter 363) as a special fund in the state treasury.

(b) Administration of the planning fund.

(1) The executive director shall administer the financial assistance program and the planning fund under the direction of the commission.

(2) An applicant for financial assistance from the planning fund shall agree to comply with commission rules, and any other requirements adopted by the commission.

(3) The executive director shall not authorize release of funds under an application for financial assistance until the applicant has furnished the executive director with a resolution adopted by the governing body of each public agency or planning region that is a party to the application certifying that:

(A) the applicant will comply with the provisions of the financial assistance program and the requirements of the commission;

(B) the grant will only be used for the purposes for which it was provided;

(C) regional or local solid waste management plans, along with their implementation plans, developed with state financial assistance will be adopted by the governing body as its policy; and

(D) future municipal solid waste management activities will, to the extent reasonably feasible, conform to the regional or local solid waste management plan.

(4) The planning fund shall not be used for the preparation of final design and working drawings, construction, acquisition of land, or an interest in land, or payment for recovered resources.

(5) The order of priority to be given to applicants in receiving financial assistance shall be determined by:

(A) the need to initiate or improve the solid waste management program within the applicant's jurisdiction;

(B) the needs of the state;

(C) the financial need of the applicant;

(D) the degree that the proposed plan work program will result in improvements that meet the requirements of other applicable state, regional, and local solid waste management plans or activities;

(E) a positive consideration for applicants who have completed approved plans while utilizing their own resources; and

(F) a positive consideration for applicants who have committed a substantial amount of their own resources for development of an approvable plan at the time that a request is made for state financial assistance.

(6) The executive director may approve an application consistent with the provisions of this section when the executive director finds state financial participation is in the public interest and when it is determined that both state and regional or local funding is sufficient to complete the agreed scope of services. The executive director shall approve or disapprove an application for financial assistance within 90 days of its receipt.

(c) Applications.

(1) Requests for state financial assistance shall be made on forms furnished by the commission and shall include a work program and budget for a defined period in which the tasks described in the work program are to be completed.

(2) The only applicant eligible to apply for regional planning financial assistance shall be the council of governments designated as responsible for the planning region for which a plan is considered.

(3) The only applicants authorized to apply for local planning financial assistance are local governments or public agencies and designated council of governments. Where the local plan is to cover a geographical area larger than the area of one city, then the application and any resulting contract shall be made by one of the cities, counties, or public agencies that has all or part of its jurisdiction within the area to be considered in the plan, and that is authorized by all public agencies with jurisdiction included in the area considered to act as their agent; or the designated council of governments that has jurisdiction over the geographical area to be considered in the plan.

§330.647. Approved Regional and Local Solid Waste Management Plans.

(a) Plans approved. The current effective regional solid waste management plan for each region or local solid waste management plan for a local government is the latest plan, including plan amendments, that has been adopted by the commission or approved by the executive director. Copies of approved plans shall be kept on file and available for public review at the Texas Commission on Environmental Quality library. Those plans, and any adopted amendments to the plans, are incorporated into this subchapter. Updates to an approved regional or local plan that do not require official adoption by the commission, as specified under §330.641(f) of this title (relating to Procedures for Regional and Local Plan Submission, Approval, and Distribution), may be incorporated into an approved plan for informational purposes, as each update is approved by the executive director. Each plan's effectiveness applies only for the geographical area described in the plan and for the period designated in the plan.

(b) Conflicting provisions. By adopting a regional or local plan, the commission determined that the plan has been developed according to commission rules and does not conflict with the state plan. If it should later be determined that provisions of an adopted plan do conflict with provisions of the state plan, then provisions of the state plan shall prevail.

(c) Agency responsibilities. It shall be the responsibility of the council of governments to coordinate the implementation of regional policies and recommended actions in an approved regional plan and coordinate local planning efforts. It shall be the responsibility of affected local governments to implement the policies and recommended actions of adopted regional and local plans and to maintain policies and

activities that do not conflict with provisions in current state, regional, and local solid waste management plans.

§330.649. Regional Solid Waste Grants Program.

(a) Authority. Funds are dedicated under Texas Health and Safety Code, §361.014, for the development and updating of regional and local solid waste management plans, and for implementing regional and local projects consistent with approved regional solid waste management plans. This regional solid waste grants program is separate from the financial assistance program outlined under §330.643 of this title (relating to Regional and Local Solid Waste Management Implementation Plan Guideline Requirements).

(b) Administration of regional solid waste grants program. The executive director shall administer the regional solid waste grants program under the direction of the commission.

(c) Funding allocation. Funds for local and regional projects under the regional solid waste grants program shall be allocated to municipal solid waste geographic planning regions according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs.

(d) Public/private cooperation. A project or service funded under the regional solid waste grant program must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(e) Pass-through grants. The executive director may establish procedures to make grant funds available to authorized local entities through pass-through grants administered by each council of governments.

(f) Applications.

(1) Requests for state financial assistance provided directly by the agency shall be made on forms furnished by the executive director.

(2) Requests for financial assistance made available through pass-through grants administered by a council of governments shall be made on forms developed jointly by the executive director and the council of governments, and furnished by the council of governments.

(g) Application procedures. Applicants for financial assistance from the agency shall follow the procedures set forth in the application instructions and guidelines issued by the executive director. Applicants for pass-through grant assistance from a council of governments shall follow the procedures set forth in the pass-through grant application instructions issued by the council of governments.

(h) Grant contracts. Grants shall be provided through contractual agreement between the agency and the grant recipient. If a council of governments provides financial assistance to local entities through a pass-through grant arrangement, the council of governments shall enter into an appropriate contractual agreement with the local grant recipient. The contractual agreement between the council of governments and the local grant recipient shall adhere to all applicable provisions of the main grant contract between the council of governments and the Texas Commission on Environmental Quality.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0348

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SUBCHAPTER P. FEES AND REPORTING

30 TAC §§330.601 - 330.604, 330.641 - 330.643

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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30 TAC §§330.671, 330.673, 330.675, 330.677

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the con-

struction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

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SUBCHAPTER R. MANAGEMENT OF USED OR SCRAP TIRES

30 TAC §§330.825 - 330.830

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

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SUBCHAPTER S. ASSISTANCE GRANTS AND CONTRACTS

30 TAC §§330.890 - 330.897

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted amendments implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted amendments also implement Texas Water Code, §5.103, Rules.

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SUBCHAPTER T. USE OF LAND OVER CLOSED MUNICIPAL SOLID WASTE LANDFILLS

30 TAC §§330.951 - 330.964

STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted amendments and new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted amendments and new sections also implement Texas Water Code, §5.103, Rules.

§330.951. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions that are applicable only to this subchapter and that supersede definitions in §330.3 of this title (relating to Definitions) where those terms appear in this subchapter. As used in this subchapter, words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this subchapter, have the following meanings.

(1) Alteration--Minor changes and standard redesign activities common in residential and commercial structures, such as moving walls and doors, that will not affect the foundation or increase the horizontal extent of the foundation.

(2) Authorization--A written approval issued by the executive director that, by its conditions, may allow the disturbance of the integrity of the final cover.

(3) Closed municipal solid waste landfill--A permitted or previously permitted municipal solid waste landfill, a municipal solid waste landfill which has never been permitted, or a dumping area as defined in this section, which stopped receiving waste and completed the closure activities.

(4) Closure plan--A plan addressing the placement of a final cap on a closed municipal solid waste landfill where waste is exposed or the existing cap is inadequate.

(5) Construction--The inception of an activity that provides improvements necessary for the utilization of an enclosed structure.

(6) Develop and/or development--Any activity on or related to real property that is intended to lead to the construction or alteration of an enclosed structure for the use and/or occupation of people for an industrial, commercial, or public purpose or to the construction of residences for three or more families, including subdivisions that will include single-family homes and duplexes.

(7) Development permit--A written permit issued by the executive director that, by its conditions, may authorize a person or persons to develop an enclosed structure over a closed municipal solid waste landfill unit. The development permit does not supersede local building and development permits, but is an additional permit.

(8) Dumping area--An non-permitted area of land or an excavation with unknown boundaries or which have had the boundaries determined through subsequent investigation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including but not limited to, construction/demolition waste, commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator hazardous waste, and industrial solid waste, and that is not a land treatment unit, surface impoundment, injection well, or waste pile as those terms are defined in §330.3 of this title (relating to Definitions).

(9) Enclosed structure or structure--Any permanent structure that is intended to be or has the potential of being used or occupied by people for an industrial, commercial, public, or residential purpose.

(10) Essential improvements--All improvements and appurtenances including, but not limited to, the excavations for the structure, installation of utilities, on-site wastewater disposal facilities, grading and drainage improvements, access drives and parking lots, foundation, security, fencing, landscape plantings, and irrigation systems necessary for the utilization of an enclosed structure.

(11) Existing structure--Any enclosed structure that began development prior to September 1, 1993.

(12) Permitted development--An enclosed structure or group of enclosed structures that have been issued a development permit.

(13) Post-closure care--The period of time beginning with the professional engineer certification of completing final closure activities as accepted by the executive director in accordance with §§330.453(f), 330.455(c), or 330.457(f)(5) of this title (relating to

Closure and Post-Closure) and ending with the professional engineer certification of completion of post-closure care maintenance as accepted by the executive director in accordance with §330.463 of this title (relating to Post-Closure Care Requirements). Monitoring and maintenance activities are required during the post-closure care period in accordance with §330.463 of this title.

(14) Post-closure care landfills--A municipal solid waste landfill facility that has received a municipal solid waste permit under §330.7 of this title (relating to Permit Required) and is currently in the post-closure care period as defined in this section.

(15) Registration--A document issued by the executive director regarding submitted information for an existing enclosed structure built over a closed municipal solid waste landfill unit that does not require a development permit.

(16) Site operating plan--A prepared document that provides guidance for operations and procedures necessary to maintain human safety and environmental protection at the development, permitted development, or existing structure in a manner consistent with the development permit and the commission's regulations.

(17) Structures gas monitoring plan--A document prepared by a licensed professional engineer that provides procedures to ensure the detection of landfill gases and the prevention of migration of landfill gases into enclosed structures.

§330.952. Applicability and Exemptions.

(a) Applicability. The requirements in this subchapter apply to:

(1) persons owning, leasing, or developing property overlying a closed municipal solid waste landfill as defined by §330.951 of this title (relating to Definitions), except as noted in subsection (b) of this section; and

(2) persons developing a tract of land greater than one acre, except as noted in subsection (b) of this section;

(b) Exemptions. The following persons shall be exempt from certain requirements of this subchapter.

(1) An owner of property constructing a single-family or double-family home, other than a developer of a housing subdivision, shall be exempt from §330.953 of this title (relating to Soil Test Required before Development), §330.954 of this title (relating to Development Permit, Development Authorization, and Registration Requirements, Procedures, and Processing), and §330.961 of this title (relating to Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit or a Municipal Solid Waste Landfill in Post-Closure Care).

(2) An owner of an existing structure built over a closed municipal solid waste landfill unit and that is a single-family or double-family home shall be exempt from §330.954 of this title and/or §330.959 of this title (relating to Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit) and §330.961 of this title.

§330.953. Soil Test Required before Development.

(a) A person may not undertake the development of a tract of land that is greater than one acre in area unless the person conducts a soil test prior to or during development and construction. The soil test is intended to determine if a landfill exists on the property planned for development.

(b) A soil test under this section shall be conducted by a licensed professional engineer.

(c) The licensed professional engineer must choose one of the following tests.

(1) Test I. The licensed engineer shall observe all subsurface disturbances, undertaken for whatever reason, during development through the completion of the foundation. A subsurface investigation prior to construction is not required by Test I.

(2) Test II. A subsurface investigation undertaken for the purpose of finding a closed municipal solid waste landfill unit. The investigation must incorporate a sufficient number of borings or excavations, the number of which shall be determined on a site-specific basis by the licensed professional engineer. Each boring or excavation shall be to a minimum depth of ten feet.

(3) Test III. A subsurface investigation conducted at the development site for geotechnical or environmental purposes, or a housing and urban development test for a homeowner's warranty.

(d) In accordance with Texas Health and Safety Code, §361.538(c), any engineer who conducts a soil test and determines that part of the tract overlies a closed municipal solid waste landfill shall notify the following persons of that determination within 30 days of the completion of the test:

(1) each owner and each lessee of the tract;

(2) the executive director;

(3) local government officials with the authority to disapprove the application for development; and

(4) the regional council of governments.

(e) The responsible engineer shall affix his seal, signature, and date of execution to the soil test results as required by the Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §131.166 (relating to Engineer's Seal).

(f) All soil test excavations where waste is removed shall be backfilled and compacted with clean high-plasticity or low-plasticity clay. The excavation shall be backfilled to exceed the existing grade and provide positive drainage.

§330.954. Development Permit, Development Authorization, and Registration Requirements, Procedures, and Processing.

(a) Permit required for development over a closed municipal solid waste (MSW) landfill unit.

(1) No person may commence or continue physical construction of an enclosed structure over a closed MSW landfill as defined in §330.951 of this title (relating to Definitions) without first submitting a development permit application in accordance with §330.956 of this title (relating to Application for Proposed or Existing Constructions Over a Closed Municipal Solid Waste Landfill Unit, General Requirements) and receiving a development permit issued by the executive director, except as noted in paragraph (7) of this subsection. The permit issued by the executive director under this subchapter is a development permit and not a permit for the management of solid waste. A permit application for a development permit shall comply with those requirements in this subchapter. A permit application to manage MSW shall comply with the applicable sections of Chapter 281 and Chapter 305 of this title (relating to Applications Processing and Consolidated Permits), and Subchapters A - M of this chapter.

(2) A development permit is required for construction of an enclosed structure over a closed MSW landfill that had received a permit under §330.7 of this title (relating to Permit Required) and had its permit revoked at the end of the post-closure care period in accordance with §305.67 of this title (relating to Revocation and Suspension upon Request or Consent) or for construction of an enclosed structure over

a non-permitted closed MSW landfill. The exact waste boundary may be determined through soil boring tests in accordance with §330.953 of this title (relating to Soil Test Required before Development), or through alternative investigation methods approved by the executive director.

(3) A development permit for construction of an enclosed structure is required for an entire property that includes a closed MSW landfill with unknown boundaries as defined in §330.951 of this title.

(4) The permit application under this subchapter must be received at least 45 days prior to the proposed commencement of construction over the closed MSW landfill unit.

(5) If a person directs an engineer to conduct Soil Test I, and the soil test reveals the existence of a closed MSW landfill unit after the commencement of construction, construction of the enclosed structure being built over the waste area shall cease immediately, and a permit application shall be submitted and a development permit issued before construction of the enclosed structure over the waste area unit can resume. The person may proceed with construction and development of other facilities, including those items listed in the definition of essential improvements.

(6) If a person directs an engineer to conduct either Soil Test II or Soil Test III and the engineer discovers a closed MSW landfill unit as a result of the test, the person shall submit a permit application. Development of an enclosed structure over the closed landfill unit cannot begin until a development permit is issued.

(7) If a person directs an engineer to conduct either Soil Test II or Soil Test III and the engineer does not detect a closed MSW landfill unit as a result of the test, but subsequently discovers a closed MSW landfill unit during the development, the person is not required to submit a permit application but must meet the provisions of §330.959 of this title (relating to Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit).

(8) As part of the application, the owner shall provide the name and physical and mailing addresses of a public building with normal operating hours such as library, city hall, or county courthouse where the application can be viewed by the general public. The facilities where the permit can be viewed shall be in compliance with all applicable requirements of the Americans with Disabilities Act. The application shall also include an adjacent landowner list.

(b) Review and approval of permit application.

(1) Notice of the opportunity to request a public meeting for an application shall be provided not later than 45 days of the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit). The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings). This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and commission staff to provide information to the public.

(2) The commission shall notify the owner by mail of the date and time of the meeting .

(3) The commission shall require the applicant to publish notice of the meeting in a newspaper that is generally circulated in each county in which the property proposed for development is located. The published notice must appear at least once a week for the two weeks before the date of the meeting. The commission shall also notify all individuals on the list of adjacent landowners at least 15 days prior to the meeting. The notice shall list the location, date, and time of the public meeting, and the location of the public building where the development permit application can be viewed.

(4) The executive director's staff will conduct the public meeting at the designated location. The owner will make a presentation of the application, the executive director's staff will describe the development permit, and public comment will be received. The public meeting is not an evidentiary proceeding.

(5) On or before the fifth day following the public meeting:

(A) the executive director will either approve or deny the development permit application. The executive director shall base the decision on whether the application meets each of the requirements of §330.956 of this title and §330.957 of this title (relating to Contents of the Development Permit and Workplan Application). A decision denying the permit shall state the deficiencies that were cause for the denial and any modifications necessary to correct those deficiencies; and

(B) a person may submit in writing to the chief clerk a request to be notified of the executive director's decision on the application.

(6) The date on which the executive director issues the order shall be construed as the date on which notice of the decision is mailed to the owner and to each person that requested notification of the executive director's decision in accordance with paragraph (5)(B) of this subsection.

(7) Petition for review of executive director's decision.

(A) The owner or a person may file a petition for review not later than the tenth day after the date the executive director issues the order. The owner or person that files a petition shall file the petition with the chief clerk, and shall mail a copy of the petition to the owner and to each person that requested notification of the executive director's decision in accordance with paragraph (5)(B) of this subsection.

(B) If a petition for review is filed, the commission shall act on the petition for review within 35 days after issuance of the executive director's order or at the next scheduled commission meeting, whichever is later. The commission may affirm or reverse the order issued by the executive director.

(C) A commission order ruling on a petition for review is final and effective on the date issued.

(8) If no petition for review is filed ten days after the executive director issues a decision, the decision is final and effective on the 11th day after the date the decision was issued.

(9) If the actual cost of reviewing the permit is not equal to the application fee, the owner will be presented with either a refund or an invoice in accordance with subsection (a)(7) of this section. If an invoice is submitted, a development permit will not be issued until the invoice is paid.

(10) An owner who is denied a development permit may submit a new application to the executive director.

(c) Requirements for development over a closed MSW landfill in post-closure care.

(1) For an MSW landfill that is covered by an existing permit for the management of solid waste received under §330.7 of this title and is currently in post-closure care, no person may commence

physical construction of an enclosed structure without submitting a permit modification application for the closure plan and post-closure plan of the existing permit in accordance with §305.70(j)(6) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), or a permit amendment application in accordance with §305.62 of this title (relating to Amendment), and a workplan including those items listed in §330.957 of this title, and receiving the approval from the executive director.

(2) For an MSW landfill that is covered by an existing permit for the management of solid waste received under §330.7 of this title and is currently in post-closure care, no person may commence with any type of non-enclosed structures, which will result in the disturbance, in any way, of the final cover without submitting a permit modification application for the closure plan and post-closure plan of the existing permit in accordance with §305.70(j)(6) of this title or a permit amendment application in accordance with §305.62 of this title, and a workplan including those items listed in §330.960 of this title (relating to Contents of Authorization Request to Disturb Final Cover Over a Closed Municipal Solid Waste Landfill for Non-enclosed Structures), and receiving the approval from the executive director.

(3) The executive director shall issue a decision to approve or deny the permit modification/amendment application. The executive director shall base the decision on whether the application meets each of the requirements of §305.70(j)(6) or §305.62 of this title, respectively, and of §330.957 or §330.960 of this title, respectively. A decision denying the permit modification/amendment shall state the deficiencies that were cause for the denial and any modifications necessary to correct those deficiencies.

(d) Registration for existing structures.

(1) The owner or lessee of an existing structure that existed or began development prior to September 1, 1993, and is built over a closed MSW landfill unit, shall submit a registration application to the executive director. The registration application shall be submitted to the executive director and shall include those items listed in §330.959 of this title. This paragraph is not intended to require that owners and lessees of enclosed structures initiate investigations for closed MSW landfills.

(2) A registration issued by the executive director under this subchapter is not a registration for the management of solid waste. A registration application for an existing structure shall comply with those requirements in this subchapter. A registration application to manage MSW shall comply with the applicable sections of Chapter 281 and Chapter 305 of this title and Subchapters A - M of this chapter.

(3) The owner shall submit the registration within 180 days from the determination that the structure overlies a closed MSW landfill.

(4) Upon receipt of written approval of the structures gas monitoring plan or approval with modifications to the plan from the executive director, the owner or lessee of the existing structure shall implement the plan in accordance with its approved schedule.

(e) Authorization to disturb final cover for non-enclosed structures.

(1) The integrity of the final cover of a closed MSW landfill shall not knowingly be violated, disturbed, altered, removed, or interrupted in any way without the prior authorization of the executive director, except where soil tests are being performed in accordance with §330.953 of this title.

(2) Penetrations of the final cover or liner systems will not be allowed without the prior authorization of the executive director. These include, but are not limited to, borings, piers, spread footings, foundations for light standards, fence posts, anchors, deadman anchors, manholes, on-site disposal systems, recreational facilities, and any other kind of non-enclosed structures.

(3) An authorization to disturb final cover issued by the executive director under this subchapter is not an authorization for the management of solid waste. An application for authorization shall comply with those requirements in this subchapter.

(4) The authorization request must be received at least 45 days prior to the proposed commencement of construction over the closed MSW landfill unit.

§330.955. Miscellaneous.

(a) An enclosed area to be occupied by people under the natural grade of the land or under the grade of the final cover of the closed municipal solid waste (MSW) landfill will not be allowed.

(b) The executive director may require that additional soil layers or building pads be placed on the final cover prior to the initiation of any construction activity or structural improvements in order to protect the integrity and function of the final cover, any liner(s), any components of the containment system(s), or any monitoring system(s).

(c) The executive director may allow small amounts of solid waste removed from a closed MSW landfill (including residuals from a soil test) to be redeposited in the closed MSW landfill on a case-by-case basis. The workplan for developing land over a closed MSW landfill should describe the steps taken to ensure that removed waste will be appropriately covered or removed to an authorized waste management facility.

(d) Unauthorized pilings in or through the final cover of a closed MSW landfill are prohibited.

(e) Unauthorized borings or other penetrations of the final cover of a closed MSW landfill are prohibited.

(f) Any water that comes in contact with waste becomes contaminated water and has to be properly discharged in a manner that will not cause surface water or groundwater contamination.

(g) Locations where waste is removed shall be backfilled and compacted with clean high-plasticity or low-plasticity clay. The excavation shall be backfilled to exceed the existing grade and provide positive drainage.

(h) No waste shall be left exposed overnight.

§330.956. Application for Proposed or Existing Constructions Over a Closed Municipal Solid Waste Landfill Unit, General Requirements.

(a) The application shall be submitted prior to the public meeting. The owner shall be required to comply with the design, construction, and operating procedures proposed in the application.

(b) The owner is responsible for providing the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the facility will pose no reasonable probability of adverse effects to the health, welfare, or physical property of residents and occupants of the structures, and the environment. Failure to provide complete information as required by this subchapter may be cause for the executive director to return the application without further action. Submission of false information shall constitute grounds for denial or revocation of the development permit. The owner is responsible for determining and reporting to the executive director any

site-specific conditions that require special design considerations. The proposed development shall be in compliance with all applicable state and federal laws.

(c) The owner shall submit an application following the requirements in §330.57(e) - (h) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities).

(d) The maps submitted as a group shall show the following:

(1) the prevailing wind direction with a wind rose;

(2) all known water wells within 500 feet of the proposed development permit boundary. The state well-numbering system designation for Texas Water Development Board "Located Wells," where applicable, shall be shown;

(3) area streams, ponds, lakes, and wetlands;

(4) the property boundary of the site;

(5) drainage, pipeline, and utility easements within or adjacent to the site; and

(6) schools, licensed day care facilities, hospitals and other health care facilities within 1,000 feet of the boundaries of the known fill area.

§330.957. Contents of the Development Permit and Workplan Application.

(a) General requirements. The application shall follow the general requirements in §330.956 of this title (relating to Application for Proposed or Existing Constructions Over a Closed Municipal Solid Waste Landfill Unit, General Requirements).

(b) Certification.

(1) Following the language of Texas Health and Safety Code, §361.533, the licensed professional engineer preparing a development permit application shall include the following certification: Certification of No Potential Threat to Public Health or the Environment. "I, _____, P.E. #_____, certify that the proposed development is necessary to reduce a potential threat to public health or the environment, or that the proposed development will not increase or create a potential threat to public health or the environment. Further, I certify that the proposed development will/will not damage the integrity or function of any component of the Closed Municipal Solid Waste Landfill Unit, including, but not limited to, the final cover, containment systems, monitoring system, or liners. This certification includes all documentation of all studies and data on which I relied in making these determinations." (signed, sealed, and dated by the licensed professional engineer).

(2) For landfills in post-closure care, the owner or operator of the closed municipal solid waste (MSW) landfill unit shall submit to the executive director for review and approval a certification, signed by an independent licensed professional engineer and including all applicable documentation necessary to support the certification, demonstrating that:

(A) any proposed construction activities or structural improvements on the closed MSW landfill unit or waste management area shall not disturb the integrity and function of the final cover, any liner(s), all components of the containment system(s), and any monitoring system(s);

(B) the post-closure activities or improvements shall not increase or serve to create any potential threat to human health and the environment or that the proposed activities or improvements are necessary to reduce a potential threat to human health and the environment;

(C) any proposed modification or replacement of existing construction activities or structural improvements on any closed MSW landfill unit or waste management area that may disturb the integrity and function of any portion of the final cover, any liner(s), any components of the containment system(s), or any monitoring system(s) shall not increase nor serve to create any potential threat to human health and the environment; and

(D) other disturbances of a closed MSW landfill unit or waste management area if the owner or operator submits to the executive director for review and approval, a certification that demonstrates that the disturbance, including the removal of any waste, shall not cause harm to the integrity and function of the final cover, any liner(s), any components of the containment system(s), or any monitoring system(s) and shall not increase nor serve to create any potential threat to human health or the environment. This certification shall be signed by the owner or operator of the unit or facility and an independent licensed professional engineer and shall include all applicable documentation necessary for the certification.

(c) Existing conditions summary. The owner shall discuss any land use, environmental, or special issues that affect the facility. This shall include, but not be limited to:

(1) condition of final cover;

(2) waste characterization;

(3) gas production; and

(4) potential environmental impacts.

(d) Legal authority. The applicant shall provide verification of the applicant's legal status. Normally, this is a one-page certificate of incorporation issued by the Secretary of State.

(e) Evidence of competency. The names of the principals and supervisors of the applicant's organization relative to the development shall be provided.

(f) Notice of appointment. The applicant shall provide a notice of appointment identifying the applicant's engineer.

(g) Notice of coordination. The applicant shall provide notice of coordination with all local, state, and federal government officials and agencies.

(h) Legal description. The applicant shall provide legal description of the property in accordance with §330.59(d) of this title (relating to Contents of Part I of the Application).

(i) Site drawing. The applicant shall provide a site drawing, drawn to scale, that indicates the location of all waste disposal areas, existing and proposed structures, creeks, and ponds.

(j) Maps. All maps shall clearly show the boundaries of the tract of land under development and the actual fill areas.

(1) General location maps. These maps shall be all or a portion of county maps prepared by the Texas Department of Transportation (TxDOT). At least one general location map shall be at a scale of 1/2 inch equals one mile. If the TxDOT publishes more detailed maps of the proposed site area, the more detailed maps shall also be included. The latest published revision of all maps shall be used. In addition, the applicant shall provide maps as necessary to accurately show proximity of the site to surrounding features and structures.

(2) General topographic maps. These maps shall be United States Geological Survey 7-1/2 minute quadrangle sheets or equivalent. At least one general topographic map shall be at a scale of one inch equals 2,000 feet.

(k) General geology and soils statement. The application shall include a discussion in general terms of the geology and soils of the proposed facility, including any known pathways for leachate and landfill gas migration.

(l) Groundwater and surface water statement. The application shall include a description of the groundwater and surface water resources at or near the facility and how they will be impacted by the development.

(m) Foundation plans. The owner shall provide foundation plans, including geotechnical soil investigation and design reports.

(1) In order to prevent gas migration into buildings and other structures, structures shall be designed and constructed in accordance with the following criteria.

(A) A geomembrane or equivalent system with very low gas permeability shall be installed between the slab and the subgrade, and a permeable layer of a minimum thickness of 12 inches, composed of an open-graded, clean aggregate material, shall be installed between the geomembrane and the subgrade.

(B) A geotextile filter shall be utilized to prevent introduction of fine soil or other particulate matter into the permeable layer.

(C) A landfill gas ventilation or active collection system shall be installed consistent with the structures gas monitoring plan required by subsection (t) of this section.

(D) Perforated venting pipes or alternative venting methods approved by the executive director shall be installed within the permeable layer and shall be designed to operate without clogging.

(E) The venting gas devices shall be constructed to allow connection to an induced-draft exhaust system.

(F) Automatic methane gas sensors shall be installed within the venting pipe and/or permeable gas layer and inside the building or any other structure in order to trigger an audible alarm when methane gas concentrations greater than 20% of the lower explosive limit are detected.

(2) Alterations of existing structures are exempt from the requirements of paragraph (1) of this subsection.

(3) An owner who requests suspension of gas monitoring based upon the demonstration required by subsection (t)(1)(B) of this section, may submit to the executive director a request for a variance from the requirements of paragraph (1) of this subsection. The executive director shall base the decision on site-specific factors including, but not limited to, age of the MSW landfill, type of waste deposited in the MSW landfill, and testing methods utilized by the owner.

(n) Other plans. The application shall include the following plans:

(1) grading and drainage;

(2) irrigation systems; and

(3) a dimensional control plan of the facility relating all existing and/or proposed enclosed structures and essential improvements of the development and the locations of all required improvements and appurtenances to the legal description boundary of the facility and the limits of the waste disposal area, signed and sealed by a registered professional land surveyor.

(o) Soil tests. The owner shall provide all soil tests and/or other information relied upon to make the determination that the facility was used as an MSW disposal area as required by §330.953 of this title (relating to Soil Test Required before Development), including procedures performed to identify the limits of the waste disposal area.

(p) Certified copies of required notices. The owner shall provide certified copies of all notices having been made by the licensed professional engineer, by the owner, and by the lessor/lessee in accordance with §330.953 of this title, §330.962 of this title (relating to Notice to Real Property Records), §330.963 of this title (relating to Notice to Buyers, Lessees, and Occupants), and §330.964 of this title (relating to Lease Restrictions).

(q) Closure plan. The owner shall provide a closure plan for any part of the waste disposal area that will not have a structure built over it, including placement of the final cover.

(r) Operational requirements plan. The owner shall provide a plan discussing the necessary procedures and practices to be implemented and followed to ensure that the owner meets the provisions of §330.961 of this title (relating to Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit or a Municipal Solid Waste Landfill in Post-Closure Care).

(s) Site operating plan. The owner shall provide a site operating plan, which at a minimum shall include specific guidance, procedures, instructions, and schedules for the following:

(1) a description, including size, type, and function, of the equipment to be utilized at the structure other than methane monitoring equipment;

(2) a detailed description of the procedures that the operating personnel shall follow to utilize the equipment; and

(3) a plan to implement and maintain the operational requirements of §330.961 of this title.

(t) Structures gas monitoring plan. The owner shall provide a structures gas monitoring plan in accordance with the following.

(1) General.

(A) The owner or lessee of a new enclosed structure built or installed over a closed MSW landfill unit shall ensure that the concentration of methane gas within the facility structure does not exceed 20% of the lower explosive limit for methane (1.0% by volume methane) in facility structures (excluding gas control or recovery system components) overlying the closed MSW landfill unit.

(i) Any new enclosed structures shall contain automatic methane gas sensors approved by the executive director and designed to trigger an audible alarm if the volumetric concentration of methane in the air is greater than 1.0% (20% of the lower explosive limit).

(ii) Any new enclosed structures built over a closed MSW landfill shall utilize a ventilation system or an active gas extraction and collection system.

(B) Landfill gas monitoring requirements for a development applying for a development permit under this subchapter may be suspended by the executive director if the owner can demonstrate that there is no potential for migration of the landfill gases listed in paragraph (2)(G) of this subsection. This demonstration shall be certified by a licensed professional engineer and approved by the executive director, and shall be based upon site-specific field-collected measurements, sampling, and analysis of physical, chemical, and biological processes.

(2) Requirements for structures gas monitoring plan. The owner or lessee shall submit a structures gas monitoring plan, designed by a licensed professional engineer, to the executive director for review and approval. The plan shall ensure detection of the presence of land-

fill gas entering on-site structures. All design drawings shall bear the licensed engineer's seal and signature. The plan shall include, but not be limited to, the following:

(A) a discussion of specific facility characteristics and potential migration pathways or barriers in the development of the plan, including, but not limited to:

(i) locations of buildings and structures relative to the waste disposal area;

(ii) the nature and age of waste and its potential to generate landfill gas;

(iii) routes of entry for the intrusion of landfill gas into structures;

(iv) ignition sources within structures;

(v) the location of any utility lines or pipelines that cross, are adjacent to, or are near the closed MSW landfill unit;

(vi) number of people occupying the structures and duration of occupation; and

(vii) depth of final cover over deposited waste;

(B) a narrative describing design characteristics of proposed structures related to landfill gas accumulation prevention, detection, and elimination including, but not limited to:

(i) structural;

(ii) electrical; and

(iii) mechanical;

(C) a description of the ventilation system or active gas collection and destruction system to be utilized including engineering drawings and manufacturer's specification sheets. Active gas collection and destruction systems shall comply with applicable parts of §§115.152, 115.153, 115.155 - 115.157, and 115.159 of this title (relating to Control Requirements; Alternate Control Requirements; Approved Test Methods; Monitoring and Recordkeeping Requirements; Exemptions; and Counties and Compliance Schedule);

(D) a description of landfill gas monitoring equipment to be used in existing and proposed structures, complete with manufacturer's specification sheets;

(E) a detailed implementation schedule for the installation of landfill gas monitoring equipment;

(F) a sampling and analysis plan for determining landfill gas components, which includes provisions for:

(i) sample withdrawal equipment and techniques;

(ii) sampling protocol for field measurements of diluted gas emissions; and

(iii) a quality assurance/quality control sampling plan to include, but not be limited to:

(I) field sampling;

(II) analytical methods;

(III) quality control samples and methods;

(IV) laboratory data reduction; and

(V) documentation required; and

(G) a complete analysis of the landfill gas to include, but not be limited to:

(i) a mass balance analysis for major components such as methane, other light hydrocarbons, carbon monoxide, and water vapor measured with fairly high precision (i.e., 5.0% - 10% relative error);

(ii) trace analyses for hydrogen sulfide, mercaptans, and ammonia; and

(iii) analysis for volatile organic compounds using an evacuated steel canister collection device (similar to United States Environmental Protection Agency Method T014) and gas chromatography/mass spectrometry detection system.

(u) Safety and evacuation plan. The owner shall provide a plan describing evacuation procedures and safety measures in the event the methane gas sensors sound the audible alarms.

§330.959. Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit.

(a) The application shall follow the general requirements as set forth in §330.956 of this title (relating to Application for Proposed or Existing Constructions Over a Closed Municipal Solid Waste Landfill Unit, General Requirements).

(b) The registration application shall consist of the following:

(1) a legal description as set forth in §330.957(e) of this title (relating to Contents of the Development Permit and Workplan Application);

(2) certified copies of all notices having been made by the owner and the lessor/lessee in accordance with §330.962 of this title (relating to Notice to Real Property Records), §330.963 of this title (relating to Notice to Buyers, Lessees, and Occupants), and §330.964 of this title (relating to Lease Restrictions);

(3) plans and drawings as set forth in §330.957(i), (j), and (n)(3) of this title;

(4) a site operating plan as set forth in §330.957(s) of this title;

(5) a structures gas monitoring plan:

(A) General.

(i) The owner or lessee of an existing structure built over a closed municipal solid waste landfill unit shall ensure that the concentration of methane gas generated by the landfill does not exceed 20% of the lower explosive limit for methane (1.0% by volume methane in air) in facility structures (excluding gas control or recovery system components). Any enclosed structures shall contain automatic methane gas sensors approved by the executive director and designed to trigger an audible alarm if the volumetric concentration of methane in the air is greater than 1.0%.

(ii) Landfill gas monitoring requirements for a registration under this section may be suspended by the executive director as provided for in §330.957(t)(1)(B) of this title.

(B) Requirements for structures gas monitoring plan. The owner or lessee shall submit a structures gas monitoring plan, designed by a licensed professional engineer, to the executive director for review and approval. The plan shall ensure detection of the presence of landfill gas entering on-site structures. All design drawings should bear the licensed engineer's seal and signature. The plan shall include, but not be limited to, the following:

(i) an analysis of specific facility characteristics and potential migration pathways or barriers as set forth in §330.957(t)(2)(A) of this title;

(ii) a facility drawing, drawn to scale, which indicates the location of all waste disposal areas, existing structures, creeks, and ponds;

(iii) a narrative describing modifications to the existing structures including, but not limited to, the following:

(I) structural;

(II) electrical;

(III) mechanical; and

(IV) landfill gas monitoring equipment including manufacturer's specification sheets and any gas ventilation or active gas extraction systems if the development utilizes such systems;

(iv) a detailed implementation schedule for the installation of landfill gas monitoring equipment;

(v) a sampling and analysis plan as set forth in §330.957(t)(2)(F) of this title; and

(vi) a landfill gas analysis as set forth in §330.957(t)(2)(G) of this title; and

(6) a safety and evacuation plan describing evacuation procedures and safety measures in the event the methane gas sensors sound the audible alarms.

§330.960. Contents of Authorization Request to Disturb Final Cover Over a Closed Municipal Solid Waste Landfill for Non-enclosed Structures.

The owner of a property that includes a closed municipal solid waste landfill shall not disturb the final cover without prior written approval from the executive director. The authorization request shall include the following:

(1) a certification as set forth in §330.957(b) of this title (relating to Contents of the Development Permit and Workplan Application);

(2) the existing conditions summary as set forth in §330.957(c) of this title;

(3) proposed project description including location related to the closed landfill;

(4) description of the construction/investigation process including, but not limited to, work schedule and safety issues during construction;

(5) description of the procedures for water and/or methane monitoring and excavated material disposal during construction;

(6) maps and drawings, site drawing, and general location map to indicate the landfill location; and

(7) engineering plans, sealed and signed by a licensed professional engineer indicating the proposed project description and its location relative to the landfill.

§330.961. Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit or a Municipal Solid Waste Landfill in Post-Closure Care.

(a) General.

(1) The development permit or registration, the site operating plan, any closure plan, the structures gas monitoring plan, the safety and evacuation plan, and all other documents and plans required by this subchapter shall become operational requirements and shall be considered a part of the operating record of the development or structure. A copy of these documents shall be maintained on site in an office at the permitted/registered development.

(2) The owner, operator, or lessee shall retain the operating record for the life of the structure.

(3) Any deviation from the development permit/registration and incorporated plans or other related documents associated with the development permit or registration without approval of the executive director is a violation of this subchapter.

(4) The development permit or registration holder shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, of any incident involving the facility relative to the development permit or registration and provisions for the remediation of the incident.

(b) Landfill gas control. All landfill gases shall be monitored in accordance with the structures gas monitoring plan prepared as set forth in §330.957 of this title (relating to Contents of the Development Permit and Workplan Application) and §330.959 of this title (relating to Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit).

(1) Landfill gas monitoring.

(A) The owner or lessee of a new structure to be built or an existing structure built over a closed municipal solid waste (MSW) landfill unit shall provide equipment for monitoring on-site structures, including, but not limited to, buildings, subsurface vaults, utilities, or any other areas where potential gas buildup would be of concern.

(B) Monitoring on-site structures may include, but is not limited to, periodic monitoring using either permanently installed monitoring probes or continuous monitoring systems.

(C) Structures located on top of the waste area shall be monitored on a continuous basis, and monitoring equipment shall be designed to trigger an audible alarm if the volumetric concentration of methane in the sampled air is greater than 1% within the venting pipe or permeable layer, and/or inside the structure. When practical, structures should be monitored after they have been closed overnight or for the weekend to allow for an accurate assessment of gas accumulation.

(D) Areas of the structure where gas may accumulate should be monitored and include, but are not limited to, areas in, under, beneath, and around basements, crawl spaces, floor seams or cracks, and subsurface utility connections.

(E) Gas monitoring and control systems shall be modified as needed to reflect modifications to the structure.

(2) Reporting.

(A) All on-site structures shall be sampled for methane on a monthly basis. All monthly sampling results shall be placed in the operating record of the facility in accordance with §330.125(b)(3) of this title (relating to Recordkeeping Requirements) and be made available for inspection by the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in accordance with §330.125(c) of this title. If methane gas levels exceeding the limits specified in paragraph (1) of this subsection are detected, the owner, operator, or lessee shall notify the executive director and take action in accordance with §330.371(c) of this title (relating to Landfill Gas Management).

(B) Sampling for specified trace gases may be required by the executive director when there is a possibility of acute or chronic exposure due to carcinogenic or toxic compounds.

(c) Air criteria.

(1) The closed MSW landfill is subject to commission jurisdiction concerning burning and air pollution control. The owner

shall ensure that the closed MSW landfill does not violate any applicable requirement of the approved state implementation plan.

(2) Ventilation of the closed MSW landfill and any enclosed structures shall be provided in accordance with all appropriate commission rules.

(d) Ponded water. The ponding of water over waste in the closed MSW landfill unit, regardless of its origin, shall be prevented. Ponded water that occurs on a closed MSW landfill unit shall be eliminated as quickly as possible and the area in which the ponding occurred shall be filled in and regraded within seven days of the occurrence.

(e) Water pollution control. Surface drainage in and around the structure shall be controlled to minimize surface water running onto, into, and off the closed MSW landfill.

(f) Groundwater monitoring. Groundwater monitoring may be required by the executive director and shall be conducted in accordance with the requirements of Subchapter J of this title (relating to Groundwater Monitoring and Corrective Action).

(g) Conduits. All conduits intended for the transport or carrying of fluids over or within the closed MSW landfill shall be double-containment (split casings shall not be used). To the extent possible, all such utilities shall be in fill material placed over the upgraded final cover.

(h) Recordkeeping requirements.

(1) The owner or lessee shall promptly record and retain in the operating record the following information:

(A) all results from gas monitoring and any remediation plans pertaining to explosive and other gases;

(B) all unit design documentation for the placement of gas monitoring systems and leachate or gas condensate removal or disposal related to the closed MSW landfill unit;

(C) copies of all correspondence and responses relating to the development permit;

(D) all documents relating to the operation and maintenance of the building, facility, or monitoring systems as they relate to the development permit; and

(E) any other document(s) as specified by the approved development permit or by the executive director.

(2) The owner, operator, or lessee shall provide written notification to the executive director, and any local pollution agency with jurisdiction that has requested to be notified, for each occurrence that documents listed in subsection (h) of this section are placed into or added to the operating record. All information contained in the operating record shall be furnished upon request to the executive director and shall be made available at all reasonable times for inspection by the executive director or his representative.

§330.962. Notice to Real Property Records.

(a) Owner of property. An owner of property that overlies a closed municipal solid waste (MSW) landfill shall prepare and file for record in the real property records in the county where the land is located a written notice stating:

(1) the former use of the land;

(2) the legal description of the tract of land that contains the closed MSW landfill, and at the owner's discretion, the portion of the tract of land that contains the closed MSW landfill;

(3) notice that restrictions on the development or lease of the land exist in Texas Health and Safety Code, Chapter 361, Subchapter R and this subchapter; and

(4) the name of the owner.

(b) Local government official. A local government official who receives notice under §330.953 of this title (relating to Soil Test Required before Development) that a closed MSW landfill exists on a tract of land shall prepare and file for record in the real property records in the county where the land is located a written notice stating:

(1) the legal description of the tract of land that contains the closed MSW landfill;

(2) the current owner of the tract;

(3) notice of the tract's former use as an MSW landfill unit; and

(4) notice that restrictions on the development or lease of the land exist in Texas Health and Safety Code, Chapter 361, Subchapter R and in this subchapter.

§330.963. Notice to Buyers, Lessees, and Occupants.

(a) An owner of land that overlies a closed municipal solid waste (MSW) landfill shall prepare a written notice stating the former use of the facility, the legal description of property, notice of the restrictions on the development or lease of the land imposed by this subchapter and Texas Health and Safety Code, Chapter 361, Subchapter R, and the name of the owner. The owner shall file for record the notice in the real property records of the county in which the property is located.

(b) An owner of land that overlies a closed MSW landfill shall notify each lessee and each occupant of a structure that overlies the unit of:

(1) the land's former use as a landfill; and

(2) the structural controls in place to minimize potential future danger posed by the closed MSW landfill.

§330.964. Lease Restrictions.

This section is not intended to require that owners and lessees of property initiate investigations for closed municipal solid waste (MSW) landfills. A person may not lease or offer for lease property that overlies a closed MSW landfill unit unless:

(1) existing development on the land is in compliance with this subchapter; or

(2) the person gives notice to the prospective lessee of what is required to bring the property and any development on the property into compliance with this subchapter and the prohibitions or requirements for future development imposed by this subchapter and by any development permit issued for development of the property under this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Acting Deputy Director, Office of Legal Services
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For further information, please call: (512) 239-0348

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30 TAC §§330.960 - 330.963

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER U. STANDARD AIR PERMITS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES AND TRANSFER STATIONS

30 TAC §§330.981, 330.983, 330.985, 330.987, 330.989, 330.991, 330.993, 330.995

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is also adopted under THSC, §382.002, which establishes the policy of the state and the purpose of the chapter to safeguard the state's air resources from pollution; §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.017, which authorizes the commission to adopt rules; §382.051, which authorizes the commission to issue a permit to construct or modify a facility that may emit air contaminants, including a standard permit for similar sources; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.017, Rules; §382.051, Permitting Authority of Commission; Rules; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.981. Effective Date.

The requirements of this subchapter will take effect on September 1, 2006.

§330.983. Definitions.

The terms used in this subchapter have the following meanings, unless the context clearly indicates otherwise.

(1) Bioremediation--The biological breakdown of waste occurring at a landfill prior to placing the waste in a landfill cell. Processing may include adding supplements and oxygen to speed the natural biological processes, after which the material will meet landfill acceptance standards and can be placed in a cell. Common sources of material requiring bioremediation are transportation or pipeline accidents and spills.

(2) Category 1 municipal solid waste landfills--Landfills with a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW, or Chapter 113, Subchapter D of this title (relating to Designated Facilities and Pollutants), as applicable.

(3) Category 2 municipal solid waste landfills--Landfills with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters and a calculated uncontrolled non-methane organic compound emission rate less than 50 megagrams per year that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW or Chapter 113, Subchapter D of this title (relating to Designated Facilities and Pollutants), as applicable.

(4) Category 3 municipal solid waste landfills--Landfills with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters and a calculated uncontrolled non-methane organic compound emission rate greater than or equal to 50 megagrams per year that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW, 40 Code of Federal Regulations Part 63, Subpart AAAA, or Chapter 113, Subchapter

D of this title (relating to Designated Facilities and Pollutants), as applicable.

(5) Construction--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(6) Facility--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(7) Modification--As pertaining to a municipal solid waste landfill defined in 40 Code of Federal Regulations §60.751, means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity after May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

(8) Modification of existing facility--Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include conditions listed under §116.10(11) of this title (relating to General Definitions).

(9) Process--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection with them, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(10) Project--As pertaining to a municipal solid waste landfill defined in 40 Code of Federal Regulations §60.751, for the purposes of this subchapter means the construction or modification of a facility or a group of facilities submitted under the same registration.

(11) Receptor--Any off-property recreational area, commercial/industrial structure, residence, or other normally occupied structures not used solely by the owner and/or operator of the municipal solid waste landfill site.

(12) Site--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location.

(13) Source--A point of origin of air contaminants, whether privately or publicly owned or operated.

(14) Waste solidification--The physical process used to reduce the mobility of constituents in a waste or to eliminate free liquids.

(15) Waste stabilization--The chemical process used to stabilize the volatility of the constituents in a waste.

§330.985. Applicability and Exceptions.

(a) This subchapter authorizes air emissions from municipal solid waste landfill sites and transfer stations that meet the conditions listed in this subchapter. Individual authorizations under this subchapter are not subject to public notice or comment or contested case hearing opportunity.

(b) This standard permit does not relieve the owner and/or operator from complying with any other applicable provisions of the Texas Health and Safety Code, Texas Water Code, rules of the Texas Commission on Environmental Quality, or any other applicable state and federal rules and regulations.

(c) An owner and/or operator may claim this standard permit for the operation, construction, or modification of a municipal solid waste landfill or a Type V transfer station including Type I, Type IAE, Type IV, and Type IVAE landfill as defined in §330.5 of this title (relating to Classification of Municipal Solid Waste Facilities), except as specified in subsection (d) of this section.

(d) Exceptions.

(1) Any project that constitutes a new major source, or major modification under the new source review requirements of the Federal Clean Air Act, Part C (Prevention of Significant Deterioration of Air Quality) or Part D (Plan Requirements for Nonattainment Areas), and the related adopted regulations are subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(2) Separate permit authorization under Chapter 106 of this title (relating to Permits by Rule) or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) must be obtained for the following activities at a site and may not be claimed under this subchapter:

(A) incineration (not including flares or air curtain incinerators), other than that used to control landfill gas emissions, as defined in 40 Code of Federal Regulations Part 60, Subpart WWW;

(B) rock crushers not used as temporary installations exclusively for cell construction, concrete batch plants, or hot mix asphalt concrete plants;

(C) composting; and

(D) a municipal solid waste landfill site that is permitted to accept 51% or more by weight or volume of Class 1 industrial nonhazardous waste.

§330.987. Certification Requirements.

(a) Type IV landfills are exempt from the requirements of this subsection.

(b) Certification under this subchapter constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with Texas Clean Air Act, Texas Health and Safety Code, Chapter 382, and the conditions precedent to the claiming of this standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition will govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any local air pollution control agency having jurisdiction over the site into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

(c) A certification under this subchapter is valid for a term not to exceed ten years from the date of receipt by the Texas Commission on Environmental Quality. An owner and/or operator is required to renew a certification by no later than the expiration date of the certification. The commission will provide written notice to operators of the renewal deadline at least 180 days prior to the expiration of the certification.

(d) Two copies of the certification must be submitted to the Waste Permits Division. One copy must be submitted to the appropriate regional office, and one copy must be sent to any appropriate local air pollution control program having jurisdiction over the site. The cer-

tification must be based on the capacity of the landfill minimum of a ten-year period. The certification must include supporting documentation to demonstrate compliance with the conditions of this subchapter and any other applicable federal and state requirements, and at a minimum should include the following:

(1) the basis and quantification of emission estimates;

(2) sufficient information to demonstrate that the project will comply with all applicable conditions of this subchapter; and

(3) a description of any equipment and related processes.

(e) Certifications must be submitted as follows.

(1) Owners or operators of existing municipal solid waste landfill sites that have been modified and do not continue to meet the existing standard permit under §116.621 of this title (relating to Municipal Solid Waste Landfills) must certify.

(2) Owners or operators must submit a certification for the initial construction of a municipal solid waste landfill under this subchapter at least 120 days prior to building or installation of any equipment or structure that may emit air contaminants.

(3) Modifications to an existing municipal solid waste landfill site that results in a change in categories as listed in §330.983 of this title (relating to Definitions) must submit a certification at least 60 days after changes occurring at the site.

(f) New facilities or changes to existing facilities that do not cause a site to become ineligible for this standard permit can be authorized by meeting one of the following:

(1) independently claiming the permit by rule under Chapter 106 of this title (relating to Permits by Rule) or a standard permit under Chapter 116, Subchapter F of this title (relating to Standard Permits), including all registrations, fees, and documentation. These independent registrations must be administratively incorporated at the next standard permit certification renewal or modification; or

(2) including the claimed permit by rule or standard permit as a part of an initial or modified certification. A claimed permit by rule or standard permit included under a municipal solid waste landfill standard permit certification is exempt from the registration and fee requirements normally required of permits by rule or standard permits. The certification must include sufficient information necessary to demonstrate qualification for those authorizations. Certifications must meet the following:

(A) update the site certification within one year of constructing new facilities or modifications if the cumulative amount of emissions resulting from the new facilities or modifications is:

(i) less than five tons per year of any criteria air contaminant for sites located in a designated nonattainment area; or

(ii) less than 25 tons per year of any criteria air contaminant for sites located in an attainment area;

(B) update the site certification within 30 days of constructing new facilities or modifications if the site is not considered an existing major source in accordance with prevention of significant deterioration review or nonattainment new source review, and the cumulative amount of emissions for these changes is:

(i) greater than or equal to five tons per year of any criteria air contaminant for sites located in a designated nonattainment area; or

(ii) greater than or equal to 25 tons per year of any criteria air contaminant for sites located in attainment areas; or

(C) update the site certification at least 30 days prior to the change, including any applicable major source netting demonstration as specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas), if the site is considered an existing major site in accordance with prevention of significant deterioration review or nonattainment new source review, and the cumulative amount of emissions for changes is:

(i) greater than or equal to five tons per year of any criteria air contaminant for sites located in a designated nonattainment area; or

(ii) greater than or equal to 25 tons per year of any criteria air contaminant for sites located in an attainment area.

§330.989. General Requirements.

(a) An owner and/or operator of a municipal solid waste landfill site must comply with the following general requirements, as applicable:

(1) provisions of Federal Clean Air Act (FCAA), §111 (concerning Standards of Performance for New Stationary Sources) as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA), including, but not limited to, Subpart WWW or Chapter 113, Subchapter D of this title (relating to Designated Facilities and Pollutants);

(2) provisions of FCAA, §112 (concerning Hazardous Air Pollutants) as listed under 40 CFR Part 61, promulgated by the EPA;

(3) maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63)), including, but not limited to, Subpart AAAA;

(4) if subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), obtain allocations to operate; and

(5) rules and regulations of the commission adopted under Texas Clean Air Act, Texas Health and Safety Code, Chapter 382, and with the intent of the Texas Clean Air Act, including the protection of health and property of the public.

(b) All representations with regard to construction plans, operating procedures, permits by rule, or standard permits claimed, and maximum emission rates in any certification for this subchapter, become conditions upon which the municipal solid waste landfill must be constructed and operated. The owner or operator must submit a revised certification for changes that vary from the original representations. If changes occur and the site remains eligible for this subchapter, the owner and/or operator of the site must follow the notification/certification procedures listed in §330.987 of this title (relating to Certification Requirements). Any change that occurs such that a site, facility, or project is no longer eligible to claim this standard permit requires proper authorization under §116.111 of this title (relating to General Application).

§330.991. Technical and Operational Requirements for all Municipal Solid Waste Landfill Sites.

(a) Air emissions from the following stationary sources are authorized by this standard permit:

(1) recycling (e.g., crushing glass, shredding or crushing aluminum, light bulb crushing, wood chipping, or mulching);

(2) transfer stations:

(A) located at a municipal solid waste (MSW) landfill site; or

(B) not located at a landfill and store over 1,000 tons of MSW overnight, defined as sunset to sunrise, must have the waste holding area covered by a ventilated building that has a minimum 16-foot vertical exhaust of 45,000 cubic feet per minute or greater;

(3) waste solidification/stabilization operations, which must be conducted with the following conditions:

(A) when dry fine powdery materials, including, but not limited to, fly ash, cement kiln dust, hydrated lime, and fine sawdust are used for mixing in the waste solidification/stabilization process loading/unloading, transporting, and mixing, they must be controlled so as to minimize particular matter emissions. Controls to minimize particular matter emissions may include loading and storing in enclosed containers, or mixing and unloading under conditions where the materials cannot become airborne; and

(B) no site-generated visible emissions may cross the property line for a period not to exceed 30 seconds in any six-minute period, as determined by United States Environmental Protection Agency (EPA) Test Method 22;

(4) landfill cell construction, operation, and closures, including landfill gas emissions and associated capture and control equipment;

(5) landfill mist spray systems to control odor. These landfill mist spray systems will operate such that no visible emissions may cross the property line for a period not to exceed 30 seconds in any six-minute period, as determined by EPA Test Method 22;

(6) any other facility or group of facilities that meets a permit by rule under Chapter 106 of this title (relating to Permits by Rule) or a standard permit under Chapter 116, Subchapter F of this title (relating to Standard Permits) with the exception of activities listed in §330.985(d)(2) of this title (relating to Applicability and Exceptions);

(7) leachate and landfill gas condensate activities, which must be conducted as follows:

(A) leachate and/or landfill gas condensate may be recirculated on-site at a rate not to exceed 100,000 gallons per day, and in accordance with the conditions and limitations specified in §330.177 of this title (relating to Leachate and Gas Condensate Recirculation); and

(B) air emissions are authorized from leachate and/or landfill gas condensate stored in tanks or disposed in evaporation ponds that are lined in accordance with §330.331(b) of this title (relating to Design Criteria), and meet the requirements in §330.17 of this title (relating to Technical Guidelines);

(8) fuel storage tanks, which must meet the following requirements:

(A) storage and transfer of gasoline, diesel fuel, or kerosene are authorized by this standard permit;

(B) permanent gasoline tanks must be located at least 500 feet from any off-property receptor;

(C) total annual throughput of gasoline for all tanks may not exceed 20,000 gallons per year unless a vapor balance system as defined in §115.10 of this title (relating to Definitions), is used; and

(D) records of annual throughput must be maintained;

(9) tire shredding, which may be conducted at a rate not to exceed 11 tons per hour. Records of the amount of tires shredded per hour must be maintained;

(10) bioremediation pads, which must be operated such that the pad must be located at least 165 feet from any off-property receptor;

(11) the GCCS, which must be designed to route total collected landfill gas to one of the following control devices:

(A) flares that satisfy requirements and are operated in accordance with 40 CFR Part 60, Subpart WWW, as applicable;

(B) a landfill gas-fired stationary, reciprocating internal combustion engine or a landfill gas-fired turbine not used to generate electricity, that satisfies all of the requirements of §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule) and §106.512 of this title (relating to Stationary Engines and Turbines);

(C) a landfill gas-fired stationary electric generating unit that satisfies all of the requirements of Chapter 116, Subchapter F of this title;

(D) a landfill gas-fired boiler, heater, or other combustion unit, not including stationary, reciprocating internal combustion engines or turbines, that satisfies the maximum heat input and nitrous oxide requirements of §106.4(a)(1) of this title and §106.183 of this title (relating to Boilers, Heaters, and Other Combustion Devices) and applicable sections of Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds);

(E) a pollution control project that satisfies all the requirements of §116.617 of this title (relating to Standard Permits for Pollution Control Projects). Any facility or process added under this subsection is not considered a new production facility for the purposes of §116.617 of this title; or

(F) a gas treatment system that processes the collected gas to produce a product or by-product for subsequent sale or use. All emissions from any atmospheric vent from the gas treatment system must be subject to the requirements of 40 CFR §60.752(b)(2)(iii)(A) or (B); and

(12) a temporary rock crusher that is used exclusively for cell construction that satisfies all the requirements of the Air Quality Standard Permit for Temporary Rock Crushers.

(b) If sampling of stacks and/or process vents are required, the owner or operator must contact the appropriate regional office and any other air pollution control program having jurisdiction over the site prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The owner or operator is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(c) The facilities covered by this standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for emissions events and unscheduled maintenance must be made in accordance with §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) and §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(d) Owners and/or operators must monitor and control particulate matter as follows.

(1) All operations must be conducted in a manner so as to minimize any particulate matter emissions at the landfill boundary. No site-generated visible emissions, as determined by EPA Test Method 22, may not cross the property line for a period exceeding 30 seconds in any six-minute period.

(2) Roads and other areas subject to vehicle traffic must be kept clean of debris and either be watered, treated with dust-suppressant chemicals, or paved with a cohesive hard surface that is maintained intact and cleaned as necessary.

(3) All excavated areas must be watered or treated with dust-suppressant chemicals as necessary to control particulate matter emissions.

(e) Tire shredding, outdoor dry abrasive blasting, the operation of a temporary rock crusher used exclusively for cell construction, or waste solidification/stabilization when fine materials are used in the process, must not occur simultaneously (no two or more processes can occur at the same time).

(f) An MSW landfill cell that contains Class 1 industrial nonhazardous waste greater than 20% by weight or volume must have a GCCS associated with the location of the Class 1 waste, and that GCCS is subject to the provisions of §330.995 of this title (relating to Recordkeeping and Reporting Requirements for all Municipal Solid Waste Landfill Sites).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER Y. MEDICAL WASTE MANAGEMENT

30 TAC §§330.1001 - 330.1010

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The adopted repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted repeals also implement Texas Water Code, §5.103, Rules.

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30 TAC §§330.1201, 330.1203, 330.1205, 330.1207, 330.1209, 330.1211, 330.1213, 330.1215, 330.1217, 330.1219, 330.1221

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is adopted under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The adopted new sections also implement Texas Water Code, §5.103, Rules.

§330.1203. Applicability.

(a) Owners and operators shall comply with the comprehensive rule revisions to this subchapter as adopted in 2006 within 120

days of the effective date of the 2006 Revisions. This subchapter is applicable to persons who generate, collect, transport, store, process, treat or dispose of medical waste.

(b) This subchapter will not apply to waste that is subject to 25 TAC Chapter 289 (relating to Radiation Control).

§330.1205. Definitions.

(a) The words, terms, and abbreviations, when used in this chapter, are defined in 25 TAC §1.132 (relating to Definitions), 25 TAC §133.2 (relating to Definitions), and in §330.3 of this title (relating to Definitions). When the definitions found in 25 TAC §1.132 are changed, such changes shall prevail over the definitions found in §330.3 of this title.

(b) For the purpose of the subchapter, medical waste managed on property that is owned or effectively controlled by one entity and that is within 75 miles of the point of generation or at an affiliated facility shall be considered to be managed on-site. An affiliated facility means a health care-related facility that generates a medical waste that is routinely stored, processed, or disposed of on a shared basis in an integrated medical waste management unit owned, operated by a hospital, and located within a contiguous health care complex.

§330.1207. Generators of Medical Waste.

(a) Health care-related facilities shall identify and segregate medical waste, as defined in §330.3 of this title (relating to Definitions), from ordinary rubbish and garbage produced within or by the facilities. Other municipal solid waste may be combined with medical waste or may be identified and segregated as a separate waste stream. Where medical waste and other municipal solid wastes are combined, the combined waste shall be considered to be medical waste.

(b) Requirements for shipment of untreated medical waste offsite are as follows.

(1) Generators may transport their own untreated waste or shall release waste only to transporters who are registered with the executive director to transport untreated medical waste as required in §330.1211 of this title (relating to Transporters of Untreated Medical Waste).

(2) Except for medical waste shipped via First Class or Priority Mail using the United States Postal Service, the generator shall obtain from the transporter a signed receipt for each shipment of medical waste.

(3) The generator shall maintain a file of receipts for shipments of untreated medical waste for a period of three years following the date of shipment. This time period may be extended by the executive director for investigative purposes or in case of enforcement action.

(4) The file of receipts for shipments of untreated medical waste shall be available for inspection by commission personnel during normal business hours without prior notice.

(c) Requirements for identification and packaging of untreated medical waste are as follows.

(1) Medical waste, other than sharps, shall be placed in a plastic bag that meets the requirements of the American Society for Testing and Materials Standards (ASTM) Number D1709.01 and ASTM D1922.00a, or as otherwise required by the United States Department of Transportation under regulations set forth in 49 Code of Federal Regulations §171.7. If empty containers that held free liquids are placed into the bag, one cup of absorbent material for each six cubic feet, or fraction thereof, of bag volume must be placed in the bottom of the bag.

(2) The bag containing medical waste shall be placed in a rigid container that is leak resistant, impervious to moisture, of sufficient strength to prevent tearing and bursting under normal conditions of use and handling, and sealed to prevent leakage or as otherwise required by the United States Department of Transportation under regulations set forth in 49 Code of Federal Regulations §173.134.

(3) If the waste contains free liquids in containers, the plastic bag and/or the rigid container shall contain absorbent material sufficient to absorb 150% of the volume of free liquids placed in the bag.

(4) The outer container shall be conspicuously marked with a warning legend that must appear in English and in Spanish, along with the international symbol for biohazardous material. The warning must appear on the sides of the container, twice in English and twice in Spanish. The wording of the warning legend shall be as follows: "CAUTION, contains medical waste which may be biohazardous" and "CAUCI N, contiene desechos medicos que pueden ser biopeligroso." The outer container shall also be labeled in accordance with 49 Code of Federal Regulations §173.134(c).

(5) The generator shall affix to each container a label that contains the name and address of the generator, the weight and contents of the container, and either the date of shipment or an identification number for the shipment.

(6) The transporter shall affix to each container a label that contains the name, address, telephone number, and state registration number of the transporter. This information may be printed on the container.

(7) The printing on labels required in paragraphs (5) and (6) of this subsection shall be done in indelible ink with letters at least 0.5 inch in height. A single label may be used to satisfy the requirements of paragraphs (5) and (6) of this subsection. If a single label is used, the transporter shall insure the label is affixed to or printed on the container.

(8) The requirements of paragraphs (5) and (6) of this subsection shall not apply to shipments where the United States Postal Service is the transporter.

(9) Sharps must be placed in a marked, puncture-resistant rigid container designed for sharps. If the container is not leakproof as defined in 49 Code of Federal Regulations §173.24(f), the container must be placed in the plastic bag described in paragraph (1) of this subsection. The bag must then be placed in a rigid container as described in paragraph (2) of this subsection.

(d) The executive director may waive any or all of the requirements in this section if a situation exists that requires a waiver of such requirements in order to protect the public health and safety from the effects of a natural or man-made disaster.

§330.1211. Transporters of Untreated Medical Waste.

(a) The requirements of this section are applicable to any person that collects for transport or that transports untreated medical waste unless that person is exempt under the following provisions.

(1) Generators who generate 50 pounds or less per month of medical waste may transport their own untreated waste to an authorized medical waste collection station, transfer station, storage facility, or processing facility without complying with the requirements of this section.

(2) Generators who generate more than 50 pounds per month of medical waste may transport their own waste to a transfer station, storage facility, or processing facility authorized to receive medical waste and shall comply with subsections (d) - (l) of this section. These generators must notify the commission that they are transporting their own waste, provide the executive director with the

information required in subsection (b) of this section, and submit an annual summary report as required by subsection (m) of this section.

(3) Medical waste transported by the United States Postal Service in accordance with the Domestic Mail Manual, incorporated by reference in 39 Code of Federal Regulations Part 111 (relating to General Information on Postal Service).

(b) Transporters shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, by letter, within 30 days of any changes to their registration if:

(1) the amount of untreated medical waste or total operation is expanded by 50% over that originally registered;

(2) the office or place of business is moved;

(3) the name of registrant or owner of the operation is changed; or

(4) the name of the partners, corporate directors, or corporate officers change.

(c) Requirements for transportation units used to collect or transport untreated medical waste are as follows.

(1) Transportation units used to collect and or transport medical waste shall:

(A) have a fully enclosed, leak-proof, cargo-carrying body, such as a cargo compartment, box trailer, or roll-off box;

(B) protect the waste from mechanical stress or compaction;

(C) carry spill cleanup equipment including, but not limited to, disinfectants, absorbent materials, personal protective equipment, such as gloves, coveralls, and eye protection, and leakproof containers or packaging materials; and

(D) have the following identification on the two sides and back of the cargo-carrying compartment in letters at least three inches high: (the name of the transporter); TCEQ; (registration number); and Caution: Medical Waste.

(2) The cargo compartment of the vehicle or trailer shall:

(A) be maintained in a sanitary condition;

(B) be locked when the vehicle or trailer is in motion;

(C) be locked or secured when waste is present in the compartment except during loading or unloading of waste;

(D) have a floor and sides made of an impervious, nonporous material;

(E) have all discharge openings securely closed during operation of the vehicle or trailer; and

(F) maintain a temperature of 45 degrees Fahrenheit or less for putrescible or biohazardous untreated medical waste transported for more than 72 hours after initial receipt from the generator.

(d) Transportation units used to transport untreated medical waste shall not be used to transport any other material until the transportation unit has been cleaned and the cargo compartment disinfected. A written record of the date and the process used to clean and disinfect the transportation unit shall be maintained for three years unless the commission directs a longer holding period. The record must identify the transportation unit by motor vehicle identification number or license tag number. The owner of the transportation unit, if not the registrant, shall be notified in writing by the registrant that the transportation unit has been used to transport medical waste and when and how the transportation unit was disinfected.

(e) Shipments of untreated medical waste, properly containerized Animal and Plant Health Inspection Services waste, and nonhazardous pharmaceutical waste shall not be commingled or mixed during transport or storage with any other waste (such as rubbish, garbage, hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control)), provided that the entire shipment of co-transported untreated medical waste, Animal and Plant Health Inspection Services waste, and nonhazardous pharmaceutical waste are delivered to the same treatment facility.

(f) Financial assurance shall be provided in accordance with Chapter 37, Subchapter U of this title (relating to Financial Assurance for Medical Waste Transporters).

(g) The transporter shall furnish the generator a signed receipt for each shipment at the time of collection of the waste. The receipt shall include the name, address, telephone number, and registration number of the transporter. The receipt shall also identify the generator by name and address, and shall list the weight of waste collected and date of collection. If certified scales are not available, the number of containers shall be listed, and the transporter must provide the generator with a written or electronic statement of the total weight of the containers within 45 days.

(h) The transporter shall initiate and maintain a record of each waste shipment collection and deposition. The record shall be in the form of a waste shipping document or other similar documentation and copies may be maintained in electronic format. The transporter shall retain a copy of all waste shipping documents showing the collection and disposition of the medical waste. Copies of waste shipping documents shall be retained by the transporters for three years in the main transporter office and made available to the commission upon request. The waste shipping document or other similar documentation shall include the:

(1) transporter's name, address, telephone number, and commission's assigned transporter registration number;

(2) name and address of the person that generated the untreated medical waste and the date collected;

(3) number of containers of untreated medical waste collected for transportation and the total weight of the containers from each generator, which must be added when certified scales are available;

(4) name of persons collecting, transporting, and unloading the waste;

(5) date and place where the untreated medical waste was deposited or unloaded;

(6) identification (permit or registration number, location, and operator) of the facility where the untreated medical waste was deposited; and

(7) name and signature of facility representative acknowledging receipt of the untreated medical waste and the weight of waste received.

(i) The transporter must be able to provide documentation of each waste shipment from the point of collection through and including the unloading of the waste at a facility authorized to accept the waste. The original shipping document must accompany each shipment of untreated waste to its final destination. The transporter is responsible for the proper collection and deposition of untreated medical waste accepted for transport.

(j) Shipments of untreated medical waste shall be deposited only at a facility that has been authorized by the commission to accept untreated medical waste. Untreated medical waste that is transported out of the state must be deposited at a facility that is authorized by the appropriate agency having jurisdiction over such waste.

(k) Transporters shall not accept untreated medical waste unless the generator has packaged the waste in accordance with the provisions of §330.1207(c) of this title (relating to Generators of Medical Waste). Transporters shall not accept containers of waste that are leaking or damaged unless or until the shipment has been repackaged.

(l) Transporter fees are as follows.

(1) Transporters are required to pay an annual registration fee to the commission based upon the total weight of untreated medical waste transported.

(2) The amount of the annual fee shall be based upon the total weight of untreated medical waste transported under each registration. The fee for the first year of operation under a registration shall be based upon an estimate of the total weight of untreated medical waste to be transported. The fee paid for the first year of operation will be adjusted after submission of at least one annual report and one registration renewal, indicating the actual weight of untreated medical waste transported. An overpayment will be credited to the next year's registration fee or will be refunded. A billing notice for underpayment of the registration fee will be sent and payment will be due within 30 days after the date of the notice.

(3) The fees shall be determined as follows.

(A) For a total annual weight transported of 1,000 pounds of medical waste or less, the fee is $100.

(B) For a total annual weight transported greater than 1,000 pounds of medical waste but equal to or less than 10,000 pounds of medical waste, the fee is $250.

(C) For a total annual weight transported greater than 10,000 pounds of medical waste but equal to or less than 50,000 pounds of medical waste, the fee is $400.

(D) For a total annual weight transported greater than 50,000 pounds of medical waste, the fee is $500.

(4) The annual fee shall accompany the owner or operator's original or renewal registration by rule claim and shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to: Cashiers Office, Texas Commission on Environmental Quality, P.O. Box 13088, Austin, Texas 78711-3088.

(m) Transporters shall submit to the executive director an annual summary report of their activities for the calendar year from January 1 through December 31 of each year. The report shall be submitted no later than March 1 of the year following the end of the report period. The report shall include the name(s) and address(es) of the facilities where the waste was deposited/unloaded, the registration/permit number of the facilities, and the amount of waste deposited/unloaded at each facility. The report shall indicate the amount of waste shipped out of state, the amount of waste shipped into the state, and the amount of waste generated and unloaded in the state.

§330.1213. Transfer of Shipments of Medical Waste.

Packages of untreated medical waste shall not be transferred between transportation units unless the transfer occurs at and on the premises of a facility authorized as a transfer station, as a storage facility, or as a treatment/processing facility that has been approved to function as a transfer station except as provided in §330.1217 of this title (relating to Medical Waste Collection Stations).

(1) In case of transportation unit malfunction, the waste shipment may be transferred to an operational transportation unit and the executive director, and any local pollution agency with jurisdiction that has requested to be notified, shall be notified of the incident in writing within five working days. The incident report shall list all transportation units involved in transporting the waste and the cause, if known, of the transportation unit malfunction.

(2) In case of a traffic accident, the waste shipment may be transferred to an operating transportation unit if necessary. Any containers of waste that were damaged in the accident shall be repackaged as soon as possible. The nearest regional office, and any local pollution agency with jurisdiction that has requested to be notified, shall be notified of the incident no later than the end of the next working day. The incident report shall list all vehicles involved in transporting the waste.

§330.1219. Treatment and Disposal of Medical Waste.

(a) Treatment requirements for medical waste shall be as follows.

(1) Medical waste shall be treated in accordance with the provisions of 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition). Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(2) A generator of 50 pounds or less per calendar month of medical waste that treats all or part of the wastes on-site shall maintain a written record that, at a minimum, contains the following information:

(A) the date of treatment;

(B) the amount of waste treated;

(C) the method/conditions of treatment;

(D) the name (printed) and initials of the person(s) performing treatment; and

(E) if applicable, name, address, telephone number, and registration number of the entity providing treatment.

(3) A generator of more than 50 pounds per calendar month of medical waste that treats all or part of the wastes on-site and persons that treat medical wastes off-site shall maintain a written record that, at a minimum, contains the following information for each batch of waste treated:

(A) the date of treatment;

(B) the amount of waste treated;

(C) the method/conditions of treatment;

(D) the name (printed) and initials of the person(s) performing treatment; and

(E) a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment.

(i) The operator shall demonstrate a minimum four log ten reduction (as defined in 25 TAC §1.132 (relating to Definitions)) on routine performance testing using appropriate Bacillus species biological indicators (as defined in 25 TAC §1.132). The operator shall conduct testing at the following intervals:

(I) for generators of more than 50 pounds but less than or equal to 100 pounds per month, testing shall be conducted at least once per month;

(II) for generators of more than 100 pounds but less than or equal to 200 pounds per month, testing shall be conducted at least biweekly; and

(III) for generators of more than 200 pounds per month and persons that treat medical wastes off-site, testing shall be conducted at least weekly.

(ii) For those processes that the manufacturer has documented compliance with the performance standard prescribed in 25 TAC §1.135 based on specified parameters (for example, pH, temperature, pressure, etc.), and for previously approved treatment processes that a continuous readout and record of operating parameters is available, the operator may substitute routine parameter monitoring for biological monitoring. The operator shall confirm that any chemicals or reagents used as part of the treatment process are at the effective treatment strength. The operator will maintain records of operating parameters and reagent strength, if applicable, for three years.

(iii) The manufacturer of single-use, disposable treatment units shall be responsible for maintaining adequate quality control for each lot of single-use products. The treating facility or entity shall be responsible for following the manufacturer's instructions.

(iv) Owners or operators of medical waste incinerators shall comply with the requirements in §111.123 of this title (relating to Medical Waste Incinerators) in lieu of biological or parametric monitoring.

(b) Requirements for disposal of medical wastes that have been treated in accordance with the provisions of 25 TAC §1.136 are as follows.

(1) Treated microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be disposed of in a permitted landfill in accordance with the provisions of subsection (e) of this section. Any markings that identify the waste as a medical waste shall be covered with a label that identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label that states that the contents of the disposable container have been treated in accordance with the provisions of 25 TAC §1.136.

(2) Treated carcasses and body parts of animals designated as a medical waste may, after treatment, be disposed of in a permitted landfill in accordance with the provisions of §330.171(c)(2) of this title. The collection and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than these sections.

(3) Treated recognizable human body parts, tissues, fetuses, organs, and the products of human abortions, spontaneous or induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of 25 TAC §1.136(a)(4).

(4) Treated sharps shall be disposed of as follows.

(A) Broken glassware and pipets may be placed in puncture-resistant packaging and discarded in a Type I or Type IAE municipal solid waste landfill.

(B) Whole hypodermic needles, syringes with attached needles, scalpel blades, and/or razors shall be placed in containers designed for sharps that is marked or labeled as containing treated waste.

(C) Sharps placed in containers designed for sharps may be encapsulated by addition of an agent to the container that will solidify and encase the contents of the container with a solid matrix. The agent must completely fill the container. The container and solidified contents must withstand an applied pressure of 40 pounds per square inch without disintegration. The container shall be identified as containing sharps that have been encapsulated in accordance with this subparagraph and may be discarded in a Type I or Type IAE municipal solid waste landfill.

(D) Sharps that have been treated by an approved method that incorporates grinding and/or shredding may be disposed in a Type I or Type IAE municipal solid waste landfill if the sharps have been made unrecognizable and significantly reduced in ability to cause puncture wounds.

(c) Unused hypodermic needles, syringes with attached needles, and scalpel blades shall be disposed of as treated sharps as specified in subsection (b)(4)(B) - (D) of this section.

(d) Operators of medical waste treatment equipment shall use backflow preventers on any potable water connections to prevent contamination of potable water supplies.

(e) Treated medical waste may be managed as routine municipal solid waste. Treated medical waste that contains whole, nonencapsulated hypodermic needles or syringes or intact red bags that are sent to a landfill for disposal shall be accompanied by a shipping document that includes a statement that the shipment contains whole, nonencapsulated hypodermic needles or syringes or intact red bags, as applicable, and that the medical waste was treated in accordance with 25 TAC §1.136 of this title (relating to Approved Methods of Treatment and Disposition).

§330.1221. On-Site Treatment Services on Mobile Treatment Units.

(a) The requirements of this section are applicable to any person that treats medical waste on mobile treatment units on the site of generation, but is not the generator of the waste.

(b) Persons that claim a registration by rule shall maintain a copy of the registration form, as annotated by the commission with an assigned registration number, at their designated place of business and in each mobile treatment unit used in treating medical waste.

(c) Requirements for mobile treatment units used in the treatment of medical waste are as follows.

(1) Treatment units used in the treatment of medical waste shall:

(A) have a fully encloseable, leak-proof, cargo carrying body, such as a cargo compartment or box trailer; and

(B) carry spill cleanup equipment including, but not limited to, disinfectants, absorbent materials, personal protective equipment, such as gloves, coveralls, and eye protection, and leakproof containers or packaging materials.

(2) The cargo compartment of the vehicle and any self-contained treatment unit(s) shall:

(A) be maintained in a sanitary condition;

(B) be secured when the vehicle is in motion;

(C) be made of such impervious, non-porous materials as to allow adequate disinfection/cleaning of the compartment or unit(s); and

(D) have all discharge openings securely closed during operation of the vehicle.

(d) Mobile treatment units used in the treatment of medical waste shall not be used to transport any other material until the unit has been cleaned and disinfected. A written record of the date and the process used to clean and disinfect the unit shall be maintained for three years unless the executive director requires a longer holding period. The record must identify the unit by motor vehicle identification number or license tag number. The owner of the unit, if not the registrant, shall be notified in writing that the unit has been used in the treatment of medical waste and when and how the unit was disinfected.

(e) Untreated medical waste shall not be commingled or mixed with hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control) either before or after treatment.

(f) Providers of on-site treatment of medical waste on mobile treatment units shall furnish the generator the documentation required in §330.1219(a)(3)(A) - (D) of this title (relating to Treatment and Disposal of Medical Waste) and a statement that the medical waste was treated in accordance with 25 TAC §1.136 of this title (related to Approved Methods of Treatment and Disposition) for the generator's records.

(g) Providers of on-site treatment of medical waste on mobile treatment units shall maintain records of all waste treatment, which includes the following information:

(1) the name, address, and phone number of each generator;

(2) the date of treatment;

(3) the amount of waste treated;

(4) the method/conditions of treatment;

(5) the name (printed) and initials of the person(s) performing the treatment;

(6) a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment. Routine performance testing using biological indicators and/or monitoring of parametric controls shall be conducted in accordance with §330.1219(a)(3)(E) of this title; and

(7) identification of performance test failures including date of occurrence, corrective action procedures, and retest dates.

(h) Providers of on-site treatment of medical waste on mobile treatment units shall not transport untreated waste unless they are registered in accordance with §330.9 of this title (relating to Registration Required).

(i) Providers of on-site treatment of medical waste on mobile treatment units shall ensure adequate training of all operators in the use of any equipment used in treatment.

(j) Providers of on-site treatment of medical waste on mobile treatment units shall have a contingency plan available in the event of any malfunction of equipment. If there is any question as to the adequacy of treatment of any load, that load shall be run again utilizing biological indicators to test for microbial reduction before the material is released for landfill disposal. If the waste must be removed from the facility before treatment is accomplished, a registered transporter shall remove the waste and all other applicable sections of this chapter shall be in effect.

(k) Owners or operators shall maintain the treatment equipment so as to not result in the creation of nuisance conditions.

(l) Fees to be assessed of providers of on-site treatment of medical waste on mobile treatment units are as follows.

(1) Treatment providers are required to pay an annual fee to the agency based upon the total weight of medical waste treated on-site under each provider registration.

(2) The amount of the annual fee shall be based upon the total weight of medical waste treated on-site.

(3) The fees shall be determined as follows.

(A) For a total annual weight of waste treated on-site of 1,000 pounds or less, the fee is $100.

(B) For a total annual weight of waste treated on-site greater than 1,000 but equal to or less than 10,000 pounds, the fee is $250.

(C) For a total annual weight of waste treated on-site greater than 10,000 but equal to or less than 50,000 pounds, the fee is $400.

(D) For a total annual weight of waste treated on-site greater than 50,000 pounds, the fee is $500.

(4) The annual fee for each provider of on-site treatment of medical waste on mobile treatment units shall accompany the owner or operator's original or renewal registration by rule claim and shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to: Cashiers Office, Texas Commission on Environmental Quality, P.O. Box 13088, Austin, Texas 78711-3088.

(m) Providers of on-site treatment of medical waste on mobile treatment units shall submit to the executive director an annual summary report of their activities for the calendar year from January 1 through December 31 of each year. The report shall be submitted no later than March 1 of the year following the end of the report period and shall contain all the information required in subsection (g) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

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Texas Commission on Environmental Quality
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CHAPTER 331. UNDERGROUND INJECTION CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.11

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §331.11 *without change* to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7840) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under the adopted FutureGen rules, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the adopted rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the rules originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and Texas Water Code (TWC), new §5.558 and §27.022, which were created by HB 2201.

The purpose of the amendment to Chapter 331 is to implement the requirements of HB 2201 with respect to the jurisdiction over injection wells used for the injection of carbon dioxide (CO_2) produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources.

Corresponding rulemakings are published in this issue of the *Texas Register* that includes changes to 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; and 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification.

SECTION DISCUSSION

§331.11. Classification of Injection Wells.

The amendment adds a new subsection (d) that states that the commission has jurisdiction over the injection of CO_2 produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources. This implements new TWC, §27.022 from HB 2201. Under federal requirements, Class II injection wells are used for injection of waste in connection with oil or gas production, enhanced recovery of oil and gas, and storage of hydrocarbons. In Texas, the Railroad Commission regulates Class II injection wells. The commission could not authorize the injection of CO_2 produced by a clean coal project for purposes of storage or sequestration into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources in a Class II injection well. The commission could authorize the injection of CO_2 for storage or sequestration in a Class I or Class V injection well depending on site-specific information such as the proposed injection formation and the location of underground sources of drinking water. Class I injection wells are authorized by a permit. Class V injection wells are generally authorized by rule.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rule is intended to establish procedural requirements for authorizing certain types of projects required for the FutureGen project without holding a contested case hearing. The rule clarifies the commission's jurisdiction over injection wells that inject CO_2 produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources. The rule is intended to describe the commission's jurisdiction over these wells and does not alter the underlying technical requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225, definition of "major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the rule does not meet any of these applicability requirements. First, the rule is consistent with and does not exceed the standards set by federal law. Second, the rule does not exceed an express requirement of state law, instead the rule implements HB 2201. Third, the rule does not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt the rule solely under the general powers of the agency, but rather under the authority of HB 2201, which directs the commission to implement rules under TWC, §27.022, which establishes the commission's jurisdiction over the injection of CO_2 produced by a clean coal project to the extent authorized by federal law.

Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking and performed an assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The rule is intended to establish a streamlined process for authorizing certain

types of projects required for the FutureGen project. The rule is procedural and establishes a system to administer the program for permitting FutureGen projects and is not specifically intended to protect the environment or to reduce risks to human health. The rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Promulgation and enforcement of the rule will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The rule also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this rule does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the rule will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program, and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The revisions include procedural mechanisms to authorize new sources of air contaminants; however, the revisions do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

PUBLIC COMMENT

A public hearing for this rulemaking was held on December 20, 2005, in Austin, and the comment period closed on December 27, 2005. The commission received comments from the United States Environmental Protection Agency, the Environmental Defense, the FutureGen Texas Advisory Board, the Sierra Club Houston Regional Group (HSC), the Center for Energy and Economic Development, and the Clean Coal Technology Foundation of Texas on the FutureGen rulemaking. HSC commented specifically on the proposed amendment to §331.11.

RESPONSE TO COMMENTS

HSC submitted numerous comments speculating on the effects of CO_2 sequestration and underground injection, and acknowledged that little data exists on this technology. HSC urged the commission to determine air, water, and land effects through its permitting authority. Examples of its concerns included: 1) the effects of existing wells in the carbon sequestration area; 2) the effect of CO_2 injection on saline aquifer water quality; and 3) the harm that may come to soil bacteria as a result of carbon sequestration.

The commission's federally authorized Underground Injection Control (UIC) Program has significant experience and data relating to protection of fresh water from the potential adverse impact of underground injection of liquid waste, including proper evaluation of injection and confining zones, subsurface faults and fractures, and other wells in the area of review. While the commission does not have data on some of the specific CO_2 injection concerns listed by HSC, the commission notes that underground injection of CO_2 has been commonly used for enhanced recovery of oil and gas under Railroad Commission of Texas jurisdiction without any known harmful effects. The commission also recognizes that the technical concerns posed by HSC are the subject of significant research efforts being conducted by the Texas Bureau of Economic Geology in association with a number of other research institutions, participating industries, and government agencies. The commission will review individual requests for well authorization under this rule using the environmentally protective rules and procedures of the UIC well permitting program. Therefore, the commission has not changed the rule in response to these comments.

HSC commented that §331.11 should include a definition of the term "usable quality water."

The definition section of Chapter 331 was not opened for the proposal so the commission is unable to include a definition at this adoption. Usable quality water means water that is an underground source of drinking water or is fresh water as those terms are defined in §331.2, Definitions.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under TWC, §27.029, which requires the commission to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under TWC, Chapter 27. The amendment is adopted under Section 13 of HB 2201, which requires the commission to adopt rules under TWC, §27.022.

The adopted amendment implements TWC, §27.022.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2006.

TRD-200601525
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Effective date: March 29, 2006
Proposal publication date: November 25, 2005
For further information, please call: (512) 239-5017

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS AND SHRIMP

The Texas Parks and Wildlife Commission adopts amendments to §§58.102, 58.150, and 58.160, concerning the Statewide Shrimp Fishery Proclamation; §§58.203, 58.205, 58.206, 58.208, and 58.209, concerning Statewide Crab Fishery Proclamation; and §58.302, concerning the Finfish Fishery Proclamation, without changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6242).

The amendments are necessary as a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule as necessary and appropriate. As a result of the review, the department has determined that rulemaking is necessary to remove unnecessary language which is redundant to language in federal regulations, clarify language and terminology, and correct outdated reference dates.

The amendment to §58.102, concerning Definitions, amends the definition of Turtle Excluder Device (TED) by adopting by reference the federal regulation prescribing approved TED devices. The amendment to §58.150, concerning Sale, Purchase, and Handling of Shrimp--General Rules, clarifies that unless a commercial shrimp boat license holder sells his catch to a licensed person required to report the sale to the department, the commercial shrimp boat license holder is required to report the sale to the department. The amendment to §58.160, concerning Taking or Attempting To Take Shrimp (Shrimping)--General Rules, removes redundant language, an expired effective date, and adopts by reference the federal regulations prescribing approved Bycatch Reduction Devices (BRD) and Turtle Excluder Devices (TED) required in inside and outside waters. The rationale and justifications for the use of TEDs and BRDs in shrimp trawls is the same as previously stated in the proposed rulemaking published in the July 14, 2000, issue of the *Texas Register* (25 TexReg 6670), which was adopted in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10157). Due to joint law enforcement agreements between state and federal enforcement officials the need to have the language specifically repeated in state law is not deemed necessary.

The amendment to §58.203, concerning Licensing, and §58.205, concerning Display of License, clarifies that crab fishermen are required to have the "display license" rather than a metal "plate" clearly visible from both sides of the boat when fishing. The amendment also allows for the display license to be made from any material. The amendment to §58.206, concerning Issuance and Renewal of Commercial Crab Fisherman's License, removes expired effective dates and enabling language concerning the limited entry program for the crab fishery. The amendment to §58.208, concerning Limit on Number of Licenses Held; Designated License Holder, clarifies that businesses or partnerships must designate a person to hold their license. The amendment to §58.209, concerning License Suspension and Revocation, removes an expired effective date and rewords for clarity's sake the license requirement for crab fishermen.

The amendment to §58.302, concerning Display of License, clarifies that when fishing, finfish fishermen are required to have the "display license" rather than a metal "plate" clearly visible from both sides of the boat. The amendment also allows for the display license to be made from any material.

The amendment to §58.102 will function by replacing a voluminous recapitulation of federal regulations with a citation of the federal regulations governing TEDs.

The amendment to §58.150 will function by removing potential confusion concerning the circumstances under which a commercial shrimp boat license holder must report sales to the department.

The amendment to §58.160 will function by replacing a voluminous restatement of federal regulations with a citation of the federal regulations governing TEDs and BRDs.

The amendments to §58.203 and §58.205 will function by clarifying that commercial crab fishermen are required to have a display license clearly visible from both sides of the boat when fishing.

The amendment to §58.206 will function by eliminating expired effective dates and obsolete language concerning the limited entry program for the crab fishery.

The amendment to §58.208 will function by clarifying that a commercial crab fisherman's license may be issued only to a named individual and not in the name of a business or partnership.

The amendment to §58.209 will function by eliminating an expired effective date and more effectively wording the requirement that crab fishermen must obtain a license.

The amendment to §58.302 will function by clarifying that finfish fishermen are required to have a display license clearly visible from both sides of the boat while fishing.

The department received no comments concerning adoption of the proposed amendments.

SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §§58.102, 58.150, 58.160

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life; Chapter 66, which requires reporting the sale of aquatic product within the state; Chapter 77, which provides the commission with authority to regulate the catching, possession, purchase, and sale of shrimp; and Chapter 78, which requires the commission to adopt any rules necessary for the administration of the crab license management program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601490

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 27, 2006
Proposal publication date: September 30, 2005
For further information, please call: (512) 389-4775

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SUBCHAPTER C. STATEWIDE CRAB FISHERY PROCLAMATION

31 TAC §§58.203, 58.205, 58.206, 58.208, 58.209

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life, and Chapter 78, which requires the commission to adopt any rules necessary for the administration of the crab license management program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601492
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 27, 2006
Proposal publication date: September 30, 2005
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SUBCHAPTER D. FINFISH FISHERY PROCLAMATION

31 TAC §58.302

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

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Ann Bright
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Effective date: March 27, 2006
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PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.3

The Texas General Land Office (GLO) and Texas School Land Board (SLB) adopt the proposed repeal to Chapter 151, Operations of the School Land Board, §151.3 relating to Appraisal Fees: Vacancies and Excess Acreage without changes to the text as published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8419). The repeal is being adopted to eliminate duplication of agency fees.

The adopted repeal will eliminate the appraisal fees for vacancies and excess acreage currently in 31 TAC §151.3. The GLO recently organized all the fees and costs the agency charges under 31 TAC, Part 1, Chapter 3, General Provisions, §3.31, relating to Fees. The GLO organized the fees and costs under one rule in order to facilitate the public's use of the agency rules and the public's understanding of the fees and costs associated with doing business with the GLO. Upon review of its rules, the GLO found that the appraised fees in 31 TAC §151.3 were redundant of those found in Chapter 3. In a continued effort to maintain and organize its rules to facilitate the public's ease in access and use of its rules, the GLO adopts the repeal of 31 TAC §151.3.

No comments were received regarding the proposed repeal.

The repeal is adopted under authority granted in Texas Natural Resources Code §31.051, which provides the Commissioner of the GLO the authority to make and enforce suitable rules consistent with the law and §32.205, which provides the SLB the authority to adopt rules to carry out Texas Natural Resources Code Chapter 32.

Texas Natural Resource Code, Chapters 31, 32 and 51 are affected by the proposed repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2006.

TRD-200601585
Trace Finley
Policy Director, General Land Office
School Land Board
Effective date: April 2, 2006
Proposal publication date: December 16, 2005
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 82. HEALTH SERVICES IN STATE OFFICE COMPLEXES

34 TAC §§82.1, 82.3, 82.5, 82.7, 82.9

The Employees Retirement System of Texas (ERS) adopts new Chapter 82, 34 TAC §§82.1, 82.3, 82.5, 82.7, and 82.9, to Title 34 Texas Administrative Code, concerning Health Services in State Office Complexes, without changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7388). Chapter 82 is added pursuant to House Bill 952, 79th Texas Legislature, Regular Session, which added Chapter 671 to the Texas Government Code. Sections 82.1, 82.3, 82.5, 82.7, and 82.9 are added to define and direct the administration and operation of a licensed advance practice nurse pilot program (pilot program). These sections also comply with and conform to applicable provisions of Chapter 1551, Texas Insurance Code, and Chapter 671 of the Texas Government Code.

ERS received one comment from an individual concerning the definition of "Nurse Practitioner" as it was defined in the proposed rule. However, the definition used in the proposed rule conforms to the definition in §301.152 of the Occupations Code. As a result, no change to the proposed rule was needed.

The new chapter is adopted under the Government Code, §671.001, which provides authorization for the ERS Board of Trustees to adopt rules necessary for implementation of this program. The new chapter is applicable to Texas Government Code, Chapter 671 and Texas Insurance Code, Chapter 1551.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2006.

TRD-200601572
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: March 30, 2006
Proposal publication date: November 11, 2005
For further information, please call: (512) 867-7421

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §421.5, concerning definitions, in Chapter 421, entitled Standards for Certification. The amendment is adopted without changes to the proposed text published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8003), and will not be republished. The purpose of the amendment is to bring definitions concerning instructors into alignment with new Chapter 425, recently adopted to be effective March 1, 2006.

The amendment: 1) deletes the existing definition for "Coordinator" and renames the designation of "Training Officer" to "Chief Training Officer" to clarify that this is the title that the commission will recognize as the individual responsible for coordinating the activities of a training facility; 2) modifies the definition of "Lead Instructor" to clarify that this is the title that the commission will recognize as the individual qualified as an instructor to deliver fire protection training; 3) adds a definition for "Non-Self-Serving Affidavit"; 4) in the definition for "Years of Experience," adds to the requirements for fire instructor courses only, the following options: holding certification from the Texas Department of State Health Services (DSHS) or the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and documentation of at least three years of experience as a volunteer in the fire service; and deletes obsolete documentation requirements for members of volunteer fire service organizations from another jurisdiction.

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b) and §419.026(a).

No comments were received from the public regarding adoption of the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel; and Texas Government Code, §419.028, which provides the TCFP with the authority to the issue or revoke certification for a training facility or fire protection personnel instructors.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601471
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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CHAPTER 423. FIRE SUPPRESSION
SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.1, §423.13

The Texas Commission on Fire Protection (TCFP) adopts amendments to §423.1 and §423.13, concerning minimum standards for structure fire protection personnel and International Fire Service Accreditation Congress (IFSAC) seals, in Chapter 423, entitled Fire Suppression. The amendments are adopted without changes to the proposed text published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8005) and will not be republished.

The purpose of the amendments is to update obsolete information. The amendments reflect a state agency name change

from "The Texas Department of Health" to "State Department of Health Services."

No comments were received from the public regarding adoption of the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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CHAPTER 427. TRAINING FACILITY CERTIFICATION

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§427.1, 427.19, 427.201, and 427.209; the repeal of §427.17 and §427.207, and new §§427.301, 427.303, 427.305, and 427.307 concerning certification requirements for on-site and distance training providers and training programs, in Chapter 427, entitled Training Facility Certification. The amendment to §427.201 and new §427.301 and §427.303 are adopted with changes to the proposed text published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8006). The amendments to §§427.1, 427.19, and 427.209; the repeal of §427.17 and §427.207, and new §427.305 and §427.307 are adopted without changes to the proposed text and will not be republished. The purpose of the repeals, amendments and new rules is to re-organize the information in the chapter to make it more easily accessible.

The repeal of §427.17 and §427.207 removes rules from existing Subchapter A and Subchapter B, which deal with certification requirements for training facilities, and re-organizes some of the information in new Subchapter C, which deals exclusively with training program requirements.

The amendments to §427.1, Minimum Standards for Certified Training Facilities for Fire Protection Personnel delete the word "qualified" in front of "instructor" in subsection (c), to reflect that the term "qualified instructor" is being deleted in an adopted amendment to §441.3, published concurrently in this issue of the *Texas Register* and change from 24 hours to three business days the time period within which any deviation in the approved course schedule or content must be reported to the commission.

The amendment to §427.201, Minimum Standards for Distance Training Provider, changes from 24 hours to three business days the time period within which any deviation in the approved course schedule or content must be reported to the commission. The change from the proposed text is a re-wording of subsection (d)(2), making explicit the types of examinations for which a training provider is required to submit a testing schedule to the commission.

The amendments to §427.19, General Information, and §427.209, General Information, delete ambiguous language regarding supervision of trainees transported to an emergency scene; and remove a reference to "qualified instructors" to reflect that this term is being deleted in an adopted amendment to §441.3, published concurrently in this issue of the *Texas Register*.

New Subchapter C, Training Programs for On-Site and Distance Training Providers, is comprised of §427.301, General Provisions for Training Programs--On-Site and Distance Training Providers, §427.303, Training Approval Process for On-Site and Distance Training Providers, §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers, and §427.307, On-Site and Distance Training Provider Staff Requirements.

In adopted §427.301, the change from the proposed text in subsection (c) deletes the words "randomly chosen." In adopted §427.303, the change from the proposed text in subsection (a) adds the words "whether on-site or distance," making explicit that the requirement for a training provider to certify that they have provided the required resources applies to both on-site and distance training providers.

No comments were received from the public regarding the proposed repeals, new rules, and amendments.

SUBCHAPTER A. ON-SITE CERTIFIED TRAINING PROVIDER

37 TAC §427.1, §427.19

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel; and §419.028, which provides the TCFP with the authority to certify training facilities and training programs, under conditions that the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601473
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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37 TAC §427.17

The repeal is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel; and §419.028, which provides the TCFP with the authority to certify training facilities and training programs, under conditions that the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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SUBCHAPTER B. DISTANCE TRAINING PROVIDER

37 TAC §427.201, §427.209

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel; and §419.028, which provides the TCFP with the authority to certify training facilities and training programs, under conditions that the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§427.201. Minimum Standards for Distance Training Provider.

(a) The following definition is applicable to this subchapter only. Approved distance training is defined as fire training where instructors and students are primarily in different locations and content is instructed primarily using the internet or an intranet and courses must contain some level of interactivity. Distance training that serves as nothing more than electronic text is not acceptable. Online courses must provide the opportunity for the student to interact or ask questions via e-mail, chat rooms or some other method of communication Other computer-mediated methods of instruction may be used to enhance instruction; however, the primary delivery method must be through the internet or an intranet.

(b) A distance training provider must seek certification as a training facility in each discipline it intends to instruct.

(c) In order to become a commission approved distance training provider; the provider must submit a completed commission training facility application with supporting documentation and fee. Such application will include descriptions and addresses of where the distance training provider will have their course delivery and materials. A distance training provider must provide documentation of its ability to meet all minimum requirements for each discipline for which it seeks certification. The documentation must also identify how students and instructors will access resources as identified in the curriculum.

(d) All training for certification must be submitted to the commission for approval at least 20 days prior to the proposed starting date of the training. Approved courses are subject to audit by commission staff any time during the approved schedule. Any deviation in the approved course schedule or content must be reported to the commission within three business days of the deviation. The academy coordinator will:

(1) attest to the fact that the training meets the competencies in the applicable Commission Curriculum and/or NFPA Standards;

(2) submit a testing schedule for all academy periodic, final, or skills examinations as required in §427.305 of this title; and

(3) notify the Commission of any changes in instructor staff and/or field examiners.

(e) A distance training provider that applies for certification as a training facility in a discipline that includes skills training shall comply with Subchapter A of this chapter concerning minimum standards, facilities, apparatus, protective clothing, equipment, and live fire training utilized to teach and test the required skills.

(f) A distance training provider certified for the first time by the commission will receive, at no charge, one Commission Certification Curriculum and Standards Manual on CD to be utilized by the certified distance training provider-s instructors. The distance training provider is responsible for ensuring that all subjects are taught as required by the curricula. Additional CD copies may be purchased from the commission or downloaded from the agency web site. Distance training providers that renew their certification will receive appropriate updates at no charge.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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37 TAC §427.207

The repeal is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel; and §419.028, which provides the TCFP with the authority to certify training facilities and training programs, under conditions that the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601475
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §§427.301, 427.303, 427.305, 427.307

The new rules are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel; and §419.028, which provides the TCFP with the authority to certify training facilities and training programs, under conditions that the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§427.301. General Provisions for Training Programs--On-Site and Distance Training Providers.

(a) Training programs that are intended to satisfy the requirements for fire protection personnel certification for each curriculum must meet the objectives and competencies in that curriculum.

(b) A system for evaluating the comprehension of the trainee, including periodic and comprehensive written tests, is required. If performance skills are part of the applicable curriculum, performance testing shall be done in accordance with §427.305 of this title.

(c) The training facility must maintain records (electronic or paper) of skills testing on each examinee. The records must reflect the results of the evaluation of skills, the dates that the skill evaluations took place, and the names of the field examiners who conducted the evaluations.

§427.303. Training Approval Process for On-Site and Distance Training Providers.

(a) When seeking training approvals, a training provider, whether on-site or distance, shall certify that it has provided the resources described in §427.1(f) of this title.

(b) All training for certification must be approved by the commission. A training provider must submit to the commission a completed Training Prior Approval Form, a schedule of periodic, final, and skills tests, and a class schedule at least 20 days prior to the proposed starting date of the training.

(c) The provider of training will receive from the commission the following documents.

(1) A Notice of Course Approval. This document will serve as notification that the course has been approved by the commission and will contain the approval number assigned by the commission and the course I.D. number.

(2) An Application for Testing Form. See §439.5(b) of this title.

(3) A Certificate of Completion Form. This document must be completed by the training provider and issued to each student when the student has successfully completed the applicable curriculum.

(d) Approved courses are subject to audit by commission staff at any time during the approved schedule. Any deviation in the approved course schedule, content, field examiners, or the substitution of one instructor for another (this does not apply to the addition of an instructor to the roster of instructors already approved by the commission) must be reported to the commission within three business days of the deviation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601477
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§429.3, 429.11, and 429.211, concerning minimum standards for basic fire inspector certification and International Fire Service Accreditation Congress (IFSAC) seals, in Chapter 429, entitled Minimum Standards for Fire Inspectors. The amendments are adopted without changes to the proposed text published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8009) and will not be republished.

The purpose of the amendments is to update obsolete information and make a grammatical correction. The amendment to §429.3 removes obsolete language pertaining to curriculum requirements for fire inspector certification that were in effect prior to January 1, 2005 and are no longer relevant. The amendments to §429.11 and §429.211 correct the title "Plans Examiner" to "Plan Examiner."

No comments were received from the public regarding adoption of the proposed amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION BASED ON REQUIREMENTS IN EFFECT PRIOR TO JANUARY 1, 2005

37 TAC §429.3, §429.11

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with

the authority to establish minimum standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601478
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.211

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601479
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.5, §435.21

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §435.5, entitled Commission Recommendations, and new §435.21, entitled Fire Service Joint Labor Management Wellness-Fitness Initiative, in Chapter 435, entitled Fire Fighter Safety. New §435.21 is adopted with changes to the proposed text published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8011). The amendment to §435.5 is adopted without changes and will not be republished.

The purpose of the proposed amendment and new rule is to endorse the Fire Service Joint Labor Management Wellness-Fitness Initiative established by International Association of Fire Fighters (IAFF) and the International Association of Fire Chiefs (IAFC).The IAFF/IAFC initiative recognizes the physical and emotional stresses associated with the job that fire fighters perform and recommends specific actions that would mitigate or lessen the impact of those stresses.

The commission established an ad-hoc committee on Fire Fighter Wellness and Fitness. The committee was charged with reviewing the current state of wellness and fitness of the fire service in Texas. They were to make recommendations to the commission regarding the promulgation of rules concerning the standards for fire fighter physicals, health, safety, and wellness.

The committee sent surveys to more than 600 Texas fire service agencies and received a response from 111 fire departments. Based upon the survey results and other information gathered, the committee made recommendations to the commission concerning possible interventions regarding regulated fire service agencies.

The amendment to §435.5 adds the IAFF/IAFC Fire Service Joint Labor Management Wellness-Fitness Initiative to the list of resources that the commission recommends employing entities use as a guide. New §435.21, Fire Service Joint Labor Management Wellness-Fitness Initiative, sets out provisions regarding the initiative, including that employing entities shall assess the wellness and fitness needs of their personnel; that they shall develop, maintain, and make available for commission inspection a standard operating procedure; and that the approach an employing entity takes regarding personnel fitness needs shall be based on the local assessment of resources. The changes in new §435.21 from the proposed text consist of: 1) a clarification that the procedure used to make the assessment of a departments wellness and fitness needs shall also be in writing and available for commission inspection; and 2) the addition of a statement in the rule text that the effective date of the new rule is October 1, 2006.

No comments were received from the public regarding adoption of the proposed amendment and new rule.

The amendment and new rule are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022(a)(5) are affected by this rulemaking.

§435.21. Fire Service Joint Labor Management Wellness-Fitness Initiative.

(a) A fire department shall assess the wellness and fitness needs of the personnel in the department. The procedure used to make this assessment shall be written and made available for commission inspection.

(b) A fire department shall develop and maintain a standard operating procedure to address those needs.

(c) The approach to the fitness needs of the department shall be based on the local assessment and local resources.

(d) The standard operating procedure shall be made available to the commission for inspection.

(e) The effective date of this rule is October 1, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601480
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

The Texas Commission on Fire Protection (TCFP) adopts the repeal of §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, 439.17, 439.201, 439.203, and 439.205; and new §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, 439.17, 439.19, 439.201, 439.203., 439.205, concerning general requirements and procedures regarding state administered examinations, performance skill evaluations, testing for proof of proficiency, and grading, in Chapter 439, entitled Examinations for Certification. The new rules are adopted without changes to the proposed text published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8012) and will not be republished.

The purpose of the adopted repeals and new rules is to re-organize the information in the chapter to make it more easily accessible.

No comments were received from the public regarding adoption of the proposed repeals and new rules.

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, 439.17

The repeals are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601481
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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37 TAC §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, 439.17, 439.19

The new rules are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601482
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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SUBCHAPTER B. EXAMINATIONS FOR DISTANCE TRAINING

37 TAC §§439.201, 439.203, 439.205

The repeals are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601483
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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37 TAC §§439.201, 439.203, 439.205

The new rules are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601484
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.3, §441.5

The Texas Commission on Fire Protection (TCFP) adopts amendments to §441.3 and §441.5, concerning continuing education definitions and requirements, in Chapter 441, entitled Continuing Education. The amendments are adopted without changes to the proposed text published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8016) and will not be republished. The purpose of the amendments is to update obsolete information.

The amendment to §441.3, Definitions, deletes the definition for "Qualified Instructor." It has been rendered obsolete because the commission's new instructor rules which become effective March 1, 2006 require all fire service instructors to be certified, with the exception of guest instructors who contract with training facilities (individuals with special knowledge, skill, and expertise in a specific subject area and who must teach under the endorsement of the lead instructor).

The amendment to §441.5 deletes references to "qualified instructors" for the same reason as stated in the preceding paragraph of this preamble.

No comments were received from the public regarding adoption of the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel; and §419.028, which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601470
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (TCFP) adopts amendments to §451.3 and §451.203, concerning minimum standards for Fire Officer I and II certification, in Chapter 451, entitled Fire Officer. The amendments are adopted without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8017) and will not be republished.

The purpose of the adopted amendments is to add new requirements for Fire Officer I certification as required in the new National Fire Protection Association (NFPA) Standard and to reflect changes made to the instructor certification titles in the new instructor rules effective March 1, 2006.

The amendment to §451.3, Minimum Standards for Fire Officer I Certification, adds the requirement that an individual must hold Fire Service Instructor I certification through the commission. The amendment to §451.203, Minimum Standards for Fire Officer II Certification, changes the titles of the required instructor certifications from Intermediate Fire Service Instructor to Fire Service Instructor I; and removes other obsolete instructor certification titles.

No comments were received from the public regarding adoption of the proposed amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.3

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to certification.

Texas Government Code, §419.008 and §419.032(b) are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601485

Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.203

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to certification.

Texas Government Code, §419.008 and §419.032(b) are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2006.

TRD-200601486
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 27, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-3821

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts (comptroller) proposes to review and consider for readoption, revision, or repeal all sections of Texas Administrative Code, Title 34, Part 1, Chapter 1 (Central Administration), Subchapter E (relating to Historically Underutilized Businesses) and Subchapter F (relating to Negotiation and Mediation of Contract Disputes); Chapter 3 (Tax Administration), Subchapter B (relating to Natural Gas), Subchapter C (relating to Crude Oil Production Tax), Subchapter K (relating to Hotel Occupancy Tax), Subchapter L (relating to Motor Fuel Tax), Subchapter O (relating to State Sales and Use Tax, §§3.281 - 3.323), Subchapter W (relating to Amusement Machine Regulation and Tax), Subchapter Y (relating to Controlled Substances Tax), Subchapter AA (relating to Automotive Oil Sales Fee), Subchapter BB (relating to Battery Sales Fee), Subchapter DD (relating to Oil Field Cleanup Regulatory Fee), Subchapter EE (relating to Boat and Motor Sales and Use Tax), Subchapter GG (relating to Insurance Tax), Subchapter HH (relating to Mixed Beverage Gross Receipts Tax), Subchapter II (relating to Telecommunications Infrastructure Fund Assessment), Subchapter JJ (relating to Cigarette and Tobacco Products Regulation), Subchapter LL (relating to Oyster Sales Fee), and Subchapter NN (relating to Fireworks Tax); Chapter 7 (Prepaid Higher Education Tuition Program); Chapter 9 (Property Tax Administration); Chapter 17 (Payment of Fees, Taxes, and Other Charges to State Agencies by Credit, Charge, and Debit Cards); and Chapter 18 (Tobacco Settlement Permanent Trust Account).

This review and consideration is being conducted in accordance with Government Code, §2001.039. The review will include, at a minimum, whether the reasons for adopting or readopting the rules continue to exist.

The comptroller will accept comments regarding the readoption of these rules for 30 days, beginning with the publication of this notice in the *Texas Register*.

Comments pertaining to this notice to review agency rules under 34 TAC Part 1, Chapters 1, 3, 7, 9, 17, and 18 may be submitted to Comptroller of Public Accounts, Tax Policy Division - Rule Review, P. O. Box 13528, Austin, Texas 78711-3528.

TRD-200601652
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: March 15, 2006

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Adopted Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts readopts all sections of Texas Administrative Code, Title 34, Part 1, Chapter 3 (Tax Administration), Subchapter A (General Rules), with amendments to §§3.1 (concerning Request for Extension of Time in Which to File Report), 3.4 (concerning Tax Refunds for Wages Paid to an Employee Receiving Financial Assistance), 3.7 (concerning Successor Liability: Liability Incurred by Purchase of a Business), and 3.9 (concerning Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers). These rules will be updated to reflect current statutory provisions, references, and policy. Subchapter A, §§3.2 (concerning Application of Payments; Unjust Enrichment; and Refunds), 3.3 (concerning Contract Examination Program), 3.5 (concerning Waiver of Penalty or Interest), 3.6 (concerning Subpoenas of Third-Party Record Keepers), 3.8 (concerning Informant's Recovery Payment Limitations), and 3.10 (concerning Taxpayer's Bill of Rights) are readopted without changes.

The Comptroller of Public Accounts readopts Texas Administrative Code, Title 34, Part 1, Chapter 3 (Tax Administration), Subchapter E (Miscellaneous Taxes Based on Gross Receipts), with amendments to §3.52 (concerning Concerns Exempt from Tax--Gas, Electric Light, Power, or Water Works). This rule will be amended to expand and add information regarding cooperatives that choose to enter the competitive electric market, and to provide information regarding deregulation of the electric utility industry.

The Comptroller of Public Accounts readopts Texas Administrative Code, Title 34, Part 1, Chapter 3 (Tax Administration), Subchapter U (Public Utility Gross Receipts Tax), with amendments to §3.511 (concerning the Public Utility Gross Receipts Tax). This section will be amended to update statutory references to reflect the recodification of relevant sections of the Texas Civil Statutes into the Utility Code; to correct the title of the subchapter and rule to indicate an assessment rather than a tax; to delete obsolete information regarding prepayment of the assessment for years 1995 through 1998; to clarify the taxpayer base and the services to which the assessment applies, and to reflect current policy and procedures, especially as affected by recent technological advancements and the deregulation of the electric and telecommunications industries.

The Comptroller of Public Accounts readopts Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter X (Pari-Mutuel Wagering Racing Revenue), §3.641 (relating to Pari-mutuel Wagering). The

comptroller has reviewed §3.641 and determined that the reasons for initially adopting the section continue to exist. Notice of any future amendments to this rule will be published in the *Texas Register*, as required under the Administrative Procedures Act, Government Code, Chapter 2001.

The Comptroller of Public Accounts readopts Texas Administrative Code, Title 34, Part 1, Chapter 3 (Tax Administration), Subchapter KK (School Fund Benefit Fee), §3.1251 (concerning School Fund Benefit Fee). The comptroller has reviewed §3.1251 and determined that the reasons for initially adopting the section continue to exist. Notice of any future amendments to this rule will be published in the *Texas Register*, as required under the Administrative Procedures Act, Government Code, Chapter 2001.

Notice of the amendment of 34 TAC §§3.1, 3.4, 3.7, 3.9, 3.52, and 3.511, will be published in subsequent issues of the *Texas Register*.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 19, 2004, issue of the *Texas Register* (29 TexReg 2927). No comments were received regarding the readoption of Chapter 3, Subchapters A, E, U, X, and KK. The comptroller has reviewed these subchapters and determined that the reasons for initially adopting these rules continue to exist.

TRD-200601655
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: March 15, 2006

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The Comptroller of Public Accounts readopts Texas Administrative Code, Title 34, Part 1, Chapter 13 (Unclaimed Property Reporting and Compliance), §13.3 (concerning Knowledge of Owner). The comptroller has reviewed §13.3 and determined that the reasons for initially adopting the rule continue to exist. Notice of any future amendments to this rule will be published in the *Texas Register*, as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 19, 2004, issue of the *Texas Register* (29 TexReg 2927). No comments were received concerning the readoption of Chapter 13.

TRD-200601656
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: March 15, 2006

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Texas State Board of Pharmacy

Title 22, Part 15

(Editor's Note: The Texas State Board of Pharmacy submitted a notice of adopted rule review that appeared in the February 24, 2006, issue of the Texas Register (31 TexReg 1315). The notice stated: "The Texas State Board of Pharmacy (Board) adopts the review of Chapter 309 (§309.1 and §309.8)..."; however, the phrase "(§309.1 and §309.8)" should have said "(§§309.1 - 309.8)." The corrected notice is republished in its entirety.)

The Texas State Board of Pharmacy adopts the review of Chapter 309, (§§309.1-309.8), concerning Generic Substitution, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8183).

The Board received written comments from the following: Abbott Laboratories, Inc.; American Thyroid Association; The Thyroid Foundation of America, Inc.; American Association of Clinical Endocrinologists; Richard Berger, M.D.; Lance Sloan, M.D.; Robert Talbert, Pharm. D., FCCP, BCPS, Division of Pharmacotherapy, College of Pharmacy, The University of Texas; Keith L Parker, M.D., Ph.D., Chief of Endocrinology and Metabolism, Southwestern Medical Center; Simona Scumpia, M.D., FACE, FRCP; and Kay R. Lewis, M.D., University of Texas Health Science Center at Houston. The written comments submitted recommended that the Board amend §309.3(e)(2) to include levothyroxine sodium as a narrow therapeutic index drug. The Board took no action based on the written comments.

The agency finds the reason for adopting the rule continues to exist.

TRD-200601570

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Teacher Retirement System of Texas

Title 34, Part 3

In accordance with the §2001.039, Texas Government Code, the Teacher Retirement System of Texas (TRS) adopts the review of the rules in Chapter 53, relating to certification by companies offering qualified investment products under TRS's 403(b) program. The proposed notice of review was published in the October 7, 2005 issue of the *Texas Register* (30 TexReg 6449).

In conjunction with this review, TRS adopted amendments to §53.7. The amendments reduce the fee for certification by a company offering qualified 403(b) plan investment products from $5,000 to $3,000. TRS has determined that, with this change, the reasons for adopting the sections in Chapter 53 continue to exist. Accordingly, TRS readopts Chapter 53, as amended.

TRS received only one public comment in response to the notice of the proposed rule review as published in the above-referenced issue of the *Texas Register*. The Texas Department of Insurance complimented TRS for the apparent efficiency that TRS has achieved in administering the 403(b) program.

This concludes the review of Chapter 53, rules relating to certification by companies offering qualified investment products.

TRD-200601617
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Filed: March 14, 2006

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §289.253(dd)(3)

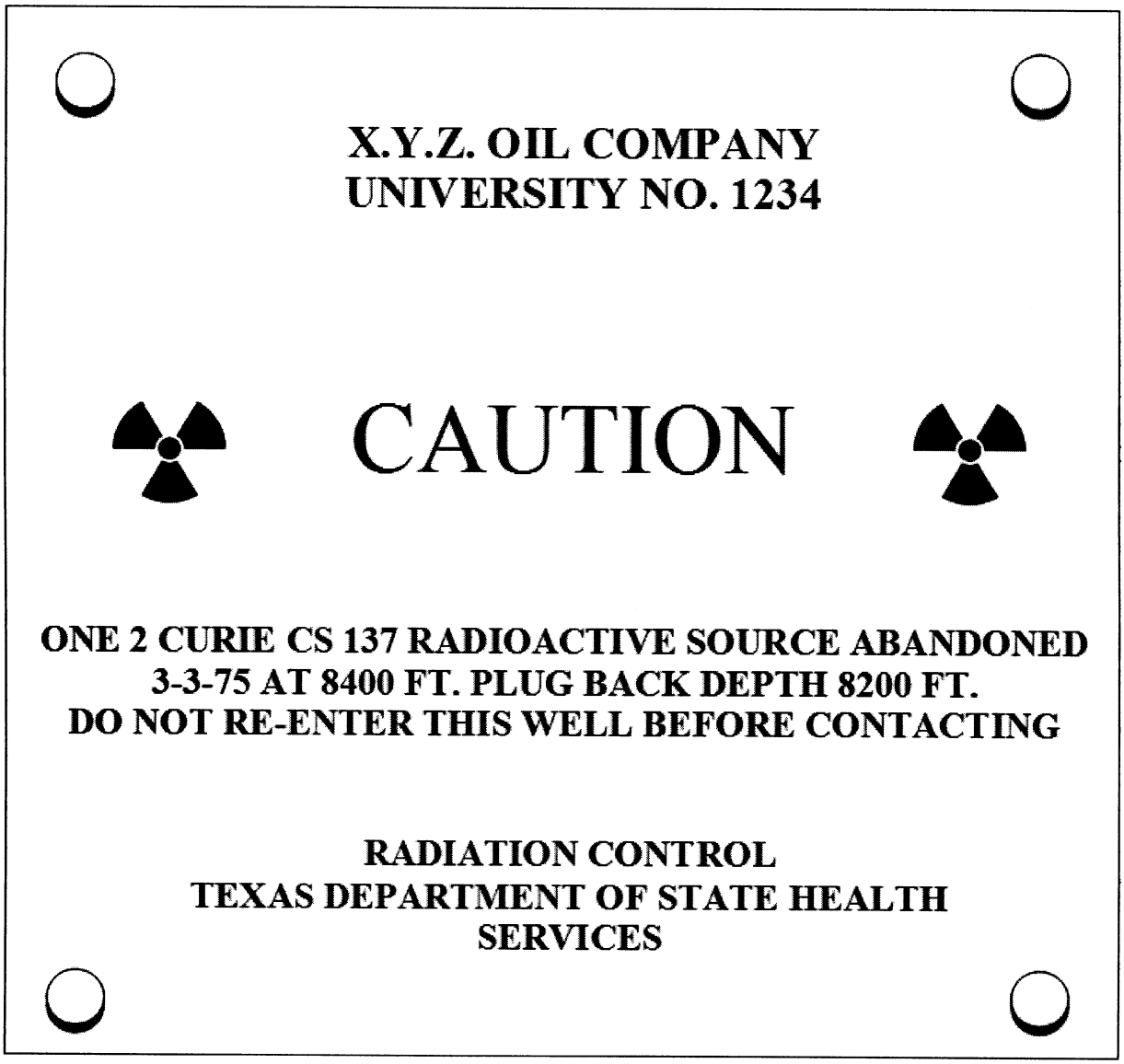

Figure: 30 TAC §37.371

LOCAL GOVERNMENT FINANCIAL TEST
LETTER FROM CHIEF FINANCIAL OFFICER

(Address to TCEQ Executive Director)

I am the chief financial officer of (name and address of local government). This letter is in support of this local government's use of the financial test to demonstrate financial assurance, as specified in 30 Texas Administrative Code (TAC) Chapter 37 (relating to Financial Assurance).

(Fill out the following paragraphs regarding facilities and associated cost estimates. If your local government has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its permit number, name, physical and mailing addresses, and current closure, post closure, or corrective action cost estimates.)

1. This local government is the owner or operator of the following facilities for which financial assurance for closure, post closure, or corrective action is demonstrated through the financial test specified in 30 TAC §37.271 (relating to Local Government Financial Test). The current cost estimates covered by the test are shown for each facility: _____.

2. This local government guarantees, through the guarantee specified in 30 TAC §37.281 (relating to Local Government Guarantee), the current closure, post closure, or corrective action cost estimates of the following facilities owned or operated by (insert owner's name or operator's name). The current cost estimates so guaranteed are shown for each facility: _____.

The fiscal year of this local government ends on (month, day, year). The figures for the following items marked with an asterisk are derived from this local government's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in the Ratio Indicators of Financial Strength if the criteria of 30 TAC §37.271(1)(A) are used. Fill in Bond Rating Indicator of Financial Strength if the criteria of 30 TAC §37.271(1)(B) are used.)

RATIO INDICATORS OF FINANCIAL STRENGTH

1. Sum of current cost estimates

(total of all cost estimates shown in the paragraphs above) $_____

*2. Sum of cash and marketable securities $_____

*3. Total expenditures $_____

*4. Annual debt service $_____

5. Environmental obligations assured by a financial test to demonstrate financial assurance in the following amounts under commission regulations and the Code of Federal Regulations (CFR) or state equivalent rules:

(a) Municipal solid waste under 30 TAC Chapter 330 (relating to Municipal Solid Waste) and 40 CFR Part 258 $_____

(b) Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste) and 40 CFR Parts 264 and 265 $_____

(c) Petroleum underground storage tanks under 30 TAC Chapter 334 (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 280 $_____

(d) Underground Injection Control System facilities under 30 TAC Chapter 331 (relating to Underground Injection Control) and 40 CFR Part 144 $_____

(e) Polychlorinated biphenyl (PCB) commercial storage facilities under 40 CFR Part 761 $_____

(f) Additional environmental obligations not shown above $_____

Total (a) - (f) $_____

*6. Total Annual Revenue $_____

Indicate either "yes" or "no" to the following questions.

7. Is line 2 divided by line 3 greater than or equal to 0.05? (yes/no)

8. Is line 4 divided by line 3 less than or equal to 0.20? (yes/no)

9. Is line 5 divided by line 6 less than or equal to 0.43? (yes/no)

BOND RATING INDICATOR OF FINANCIAL STRENGTH

1. Sum of current cost estimates (total of all cost estimates shown in the paragraphs above) $_____

2. List the following information on all the outstanding, rated, unsecured general obligation bonds, revenue bonds, or certificates of obligation issued to the local government: Current bond rating of most recent issuance and name of rating service _____

Date of issuance of bond _____

Date of maturity of bond _____

3. Environmental obligations assured by a financial test to demonstrate financial assurance in the following amounts under commission regulations and the CFR or state equivalent rules:

(a) Municipal solid waste under 30 TAC Chapter 330 and 40 CFR Part 258 $_____

(b) Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 and 40 CFR Parts 264 and 265 $_____

(c) Petroleum underground storage tanks under 30 TAC Chapter 334 and 40 CFR Part 280 $_____

(d) Underground Injection Control System facilities under 30 TAC Chapter 331 and 40 CFR Part 144 $_____

(e) PCB commercial storage facilities under 40 CFR Part 761 $_____

(f) Additional environmental obligations not shown above $_____

Total (a) - (f) $_____

*4. Total Annual Revenue $_____

Indicate either "yes" or "no" to the following question.

5. Is line 3 divided by line 4 less than or equal to 0.43? (yes/no)

I hereby certify that the wording of this letter is identical to the wording specified in 30 TAC §37.371 as such regulations were constituted on the date shown immediately below. I further certify the following: that the local government's financial statements are prepared in conformity with Generally Accepted Accounting Principles for governments, including conformance with General Accounting Standards Board Statement 18, and its financial statements have been audited by an independent Certified Public Accountant (CPA); that the local government has not operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; that the local government is not in default on any outstanding general obligations bonds; that the local government does not have outstanding general obligations rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; and that the local government has not received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent CPA.

(Signature) _____

(Name) _____

(Title) _____

(Date) _____

Figure: 30 TAC §37.9190(a)

TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the Texas Commission on Environmental Quality, "TCEQ," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a quarry(ies) shall provide assurance that funds will be available when needed for reclamation at the quarry or restoration related to the quarry.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the quarry(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Quarries and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each quarry list the permit number, name, physical and mailing addresses, and the current cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement. Identify for each current cost estimate the amount designated for reclamation at the quarry or restoration related to the quarry).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TCEQ. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TCEQ.

Section 4. Payment from the Fund. The Trustee shall make payments from the Fund as the TCEQ executive director shall direct, in writing, to provide for the payment of the costs of reclamation at the quarry or restoration related to the quarry(ies) covered by this Agreement. The Trustee shall

reimburse the Grantor or other persons as specified by the TCEQ executive director from the Fund for expenditures for reclamation at the quarry or restoration related to the quarry in such amounts as the TCEQ executive director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the TCEQ executive director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the TCEQ executive director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the TCEQ executive director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of

the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the TCEQ executive director, and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the TCEQ executive director to the Trustee shall be in writing, signed by the executive director or the executive director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TCEQ hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TCEQ, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the TCEQ executive director, or by the Trustee and the TCEQ executive director if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the TCEQ executive director, or by the Trustee and the TCEQ executive director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the TCEQ executive director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 30 Texas Administrative Code §37.9190(a) as such regulations were constituted on the date first above written.

(Signature of Grantor)

By (Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

By (Title)

Attest:

(Title)

(Seal)

Figure: 30 TAC §37.9190(b)

CERTIFICATION OF ACKNOWLEDGMENT

State of _____

County of _____

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(signature of Notary Public)

Figure: 30 TAC §37.9200

PAYMENT BOND

Date bond executed: _____.

Effective Date: _____.

Principal: (legal name and business address of owner and operator) _____.

Type of Organization: (insert "individual," "joint venture," "partnership," or "corporation,") _____.

State of Incorporation: _____.

Surety(ies): (name(s) and business address(es)) _____.

Permit number, name, physical and mailing addresses, and reclamation or restoration amount(s) for each quarry guaranteed by this bond (indicate reclamation or restoration amounts separately for each quarry): _____.

Total penal sum of bond: $_____.

Surety's bond number: _____.

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Texas Commission on Environmental Quality, hereinafter called TCEQ, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the appropriate program area, to comply with permit requirements in order to own or operate each quarry identified above, and

Whereas said Principal is required to provide financial assurance for reclamation at the quarry or restoration related to the quarry, as a condition of the permit or other applicable requirements, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of reclamation or restoration at or related to each quarry identified above, fund into the standby trust fund the amount(s) identified above for the quarry,

Or, if the Principal shall fund into the standby trust fund in such amount(s) within 15 days after a written directive is issued by the executive director or commission to begin reclamation or restoration or or within 15 days after an order to begin final reclamation or restoration is issued by the United States district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in 30 Texas Administrative Code, Chapter 37 (relating to Financial Assurance) and obtain the TCEQ executive director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the TCEQ executive director from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the TCEQ executive director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the quarry(ies) into the standby trust fund as directed by the TCEQ executive director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the TCEQ executive director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the TCEQ executive director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the TCEQ executive director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new reclamation or restoration amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the TCEQ executive director.

In Witness Whereof, the Principal and Surety(ies) have executed this Payment Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 Texas Administrative Code §37.9200 as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s)) _____

(Name(s)) _____

(Title(s)) _____

(Corporate seal)

Corporate Surety(ies)

(Name and address) _____

State of Incorporation: _____

Liability limit: $_____

(Signature(s)) _____

(Name(s) and title(s)) _____

(Corporate Seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $_____

Figure: 30 TAC §37.9210

IRREVOCABLE STANDBY LETTER OF CREDIT

Executive Director

Texas Commission on Environmental Quality

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars $_____, available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit No. _____, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of 30 Texas Administrative Code Chapter 37."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

We certify that the wording of this letter of credit is identical to the wording specified in 30 Texas Administrative Code §37.9210 as such regulations were constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution) _____

(Date) _____

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code").

Figure: 30 TAC §37.9220

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "insurer"): _____
_____.

Name and Physical and Mailing Addresses of Insured (herein called the "insured"): _____
_____.

Quarries covered: (list for each quarry: The permit number, name, physical and mailing addresses, and the amount of insurance for reclamation or restoration, (these amounts for all quarries covered must total the face amount shown below).) _____

Face Amount: _____

Policy Number: _____

Effective Date: _____

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for reclamation at the quarry(ies) or restoration related to the quarry(ies), identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 30 Texas Administrative Code §37.9215 (relating to Insurance Requirements), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the executive director of the Texas Commission on Environmental Quality, the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 30 Texas Administrative Code §37.9220 as such regulations were constituted on the date shown immediately below.

(Authorized signature of Insurer) _____

(Name of person signing) _____

(Title of person signing) _____

(Signature of witness or notary:) _____

(Date) _____

Figure: 30 TAC §37.9230

FINANCIAL TEST
LETTER FROM CHIEF FINANCIAL OFFICER

(Address to TCEQ executive director)

I am the Chief Financial Officer of (name and address of firm.) This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure, post closure, corrective action, restoration or reclamation as specified in 30 Texas Administrative Code (TAC) Chapter 37 (relating to Financial Assurance). (Fill out the following five paragraphs. For each facility or quarry include: the name, permit number, program area (hazardous waste, municipal solid waste, quarry etc.), physical and mailing addresses, and current cost estimate. Identify for each current cost estimate the amount designated for closure, post closure, corrective action, restoration, or reclamation. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated.)

1. This firm is the owner or operator of the following facilities in Texas for which financial assurance for closure, post closure, corrective action, restoration, or reclamation costs is being demonstrated through a financial test specified in 30 TAC Chapter 37. The current cost estimate covered by the test is shown for each facility or quarry: _____.

2. This firm guarantees, through a corporate guarantee specified in 30 TAC Chapter 37, the cost for closure, post closure, corrective action, restoration, or reclamation costs of the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility or quarry: _____. The firm identified above is (the direct or higher-tier parent corporation of the owner or operator, or engaged in a substantial business relationship with the owner or operator).

3. In States where TCEQ is not administering the financial requirements of 30 TAC Chapter 37, this firm, as owner, operator, or guarantor, is demonstrating financial assurance for the closure, post closure, corrective action or restoration, or reclamation costs of the following facilities through the use of a test equivalent to a financial test specified in 30 TAC Chapter 37. The current cost estimates covered by such a test are shown for each facility or quarry: _____.

4. The firm identified above owns or operates the following facilities for which financial assurance for closure, post closure, corrective action, restoration, or reclamation costs, is not demonstrated through the financial test or any other financial assurance mechanisms specified in 30 TAC Chapter 37 or equivalent State mechanisms to TCEQ, a federal agency, or another state. The current cost estimates not covered by such financial assurance are shown for each facility or quarry: _____.

5. This firm is the owner or operator or guarantor of the following facilities for which financial assurance is being demonstrated under other EPA regulations or state programs authorized by EPA through a financial test or guarantee. The following amounts have not been included in Paragraphs 1- 4. (For each program area identify: the facility or quarry name, physical and mailing address, federal or state equivalent regulations, permit number, and current cost estimate. Identify for each current cost estimate the amount designated for closure, post closure, corrective action, restoration, or reclamation costs).

   (a) Municipal solid waste management facilities under 30 TAC Chapter 330, 40 CFR Part 258 or equivalent $_____

(b) Underground injection control facilities under 30 TAC Chapter 331, 40 CFR Part 144 or equivalent $_____

(c) Petroleum underground storage tank facilities under 30 TAC Chapter 334, and 40 CFR Part 280 or equivalent $_____

(d) PCB storage facilities under 40 CFR Part 761 or equivalent $_____

(e) Hazardous waste treatment, storage, and disposal facilities under 30 TAC Chapter 335, 40 CFR Parts 264 and 265 or equivalent $_____

(f) Quarry facilities under 30 TAC Chapter 311 $_____

(g) Additional environmental obligations not shown above $_____
Total (a)-(f) $_____

This (owner, operator, or guarantor) (has or has not) received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on its financial statements for the latest completed fiscal year.

This firm (is required or is not required) to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year. The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in Alternative I if the criteria of 30 TAC §37.9225(b)(1) are used. Fill in Alternative II if the criteria of 30 Texas Administrative Code §37.9225(b)(2) are used.)

ALTERNATIVE I

(1) (a) Sum of current closure, post closure, corrective action, reclamation and restoration costs (total of all cost estimates shown in the five paragraphs above) $_____

(b) Amount of annual aggregate liability coverage to be demonstrated by a financial test or corporate guarantee $_____

(c) Total of lines (a) and (b) $_____

*2. Total liabilities (if any portion of the closure, post closure, corrective action, restoration, or reclamation costs(s), is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) $_____

*3. Tangible net worth $_____

*4. Net Worth $_____

*5. Current assets $_____

*6. Current liabilities $_____

*7. Net working capital (line 5 minus line 6) $_____

*8. The sum of net income plus depreciation, depletion and amortization $_____

*9. Total assets in U. S. (required only if less than 90% of firm's assets are located in U.S.) $_____

Indicate either "yes" or "no" to the following questions.

10. Is line 3 at least $10 million? (yes/no)

11. Is line 3 at least 6 times line 1(c)? (yes/no)

12. Is line 7 at least 6 times line 1(c)? (yes/no)

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (yes/no)

14. Is line 9 at least 6 times line 1(c)? (yes/no)

15. Is line 2 divided by line 4 less than 2.0? (yes/no)

16. Is line 8 divided by line 2 greater than 0.1? (yes/no)

17. Is line 5 divided by line 6 greater than 1.5? (yes/no)

ALTERNATIVE II

1. (a) Sum of current closure, post closure, corrective action, restoration, and reclamation costs (total of all cost estimates shown in the five paragraphs above) $_____

(b) Amount of annual aggregate liability coverage to be demonstrated by a financial test or corporate guarantee $_____

(c) Total of lines (a) and (b) $_____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth (if any portion of the closure, post closure care, corrective action, reclamation or restoration cost estimate(s), is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) $_____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.) _____

Indicate either "yes" or "no" to the following questions.

7.	Is line 5 at least $10 million?	(yes/no)
8.	Is line 5 at least 6 times line 1(c)?	(yes/no)
*9.	Are at least 90% of the firm's assets located in the U.S.? If not, complete line 10	(yes/no)
10.	Is line 6 at least 6 times line 1(c)?	(yes/no)

I hereby certify that the wording of this letter is identical to the wording specified in 30 Texas Administrative Code §37.9230 as such regulations were constituted on the date shown immediately below.

(Signature) _____

(Name) _____

(Title) _____

(Date) _____

Figure: 30 TAC §37.9240

CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor. This guarantee is made to the Texas Commission on Environmental Quality (TCEQ) on behalf of (owner or operator) of (business address), which is (one of the following: "our subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 30 TAC §37.11 (relating to Definitions)."

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 30 Texas Administrative Code (TAC) §37.9225 (relating to Financial Test Requirements) and §37.9235 (relating to Corporate Guarantee Requirements).

2. (Owner or operator) owns or operates the following quarry(ies) covered by this guarantee: (List for each quarry: permit number, name, and physical and mailing addresses. Indicate for each whether guarantee is for reclamation or restoration).

3. "Reclamation or Restoration plans" as used below refer to the plans maintained as required for the reclamation at or restoration related to the quarries as identified above.

4. For value received from (owner or operator), (describe consideration and dollar amount), guarantor guarantees to TCEQ that in the event that (owner or operator) fails to perform (reclamation at the above quarries or restoration related to the above quarries in accordance with the reclamation or restoration plans, permits, other applicable requirements and written directive by the executive director or commission whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 30 TAC §37.9185 (relating to Trust Fund Requirements), in the name of (owner or operator) in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the TCEQ executive director and to (owner or operator) that the guarantor intends to provide alternate financial assurance as specified in 30 TAC Chapter 37 (relating to Financial Assurance), as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the TCEQ executive director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the TCEQ executive director of a determination that guarantor no longer meets the financial test criteria or is disallowed from continuing as a guarantor of (reclamation or restoration), guarantor shall establish alternate financial assurance as specified in 30 TAC Chapter 37, Subchapter W (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the reclamation or restoration plans, or restoration requirements, amendment or modification of the permit, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable financial assurance requirements of 30 TAC Chapter 37 for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the TCEQ executive director and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the TCEQ executive director approves, alternate financial assurance.

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in 30 TAC Chapter 37, as applicable, and obtain written approval of such assurance from the TCEQ executive director within 90 days after a notice of termination by the guarantor is received by the TCEQ executive director from guarantor, guarantor shall provide such alternate financial assurance in the name of the (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the TCEQ or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the reclamation plans, restoration plans, or restoration requirements, and of amendments or modifications of the permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §37.9240 as such regulations were constituted on the date first above written.

Effective date:_____

(Name of guarantor) _____

(Authorized signature for guarantor) _____

(Type name of person signing) _____

(Title of person signing) _____

Signature of witness or notary:_____

Figure: 30 TAC §311.79(1)

Parameter	Daily Average Limitation
Total Suspended Solids	45 milligrams per liter
pH	Between 6.0 and 9.0 standard units

Figure: 30 TAC §311.79(3)

Parameter	Monitoring Frequency
Total Suspended Solids	1/day, when discharging
pH	1/day, when discharging

Figure: 30 TAC Chapter 330--Preamble

County	Major Source Thresholds (tons/yr) One-Hour			Major Source Thresholds (tons/yr) Eight-Hour		
	VOC	NO_x	CO	VOC	NO_x	CO
Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller	25	25	100	100	100	100
El Paso	50	100	100	100	100	100
Collin, Dallas, Denton, Tarrant, Hardin, Jefferson, and Orange	50	50	100	100	100	100
Ellis, Johnson, Kaufman, Parker, and Rockwall Hardin, Jefferson, and Orange	100	100	100	100	100	100

Figure: 30 TAC §330.63(e)(4)(B)

TABLE OF BORINGS

Size of Area in Acres	Number of Borings	Min. No. of Borings 30 Feet below the Elev. of Deepest Excavation
5 or less	2-4	2
5-10	4-6	3
10-20	6-10	5
20-50	10-15	7
50-100	15-20	7-12
100-150	20-23	12-13
150-200	23-26	13-15
200-250	26-29	15-16
250-300	29-32	16-17
300-350	32-35	17-18
350-400	35-38	18-20
400-450	38-42	20-21
450-500	42-44	21-22
500-550	44-47	22-24
550-600	47-50	24-26
More than 600	Determined in consultation with the executive director	

* The executive director may approve different boring depths if site-specific conditions justify variances.

Figure: 30 TAC §330.205(d)

Contaminant	Total Limit	TCLP Limit
Benzene	10 milligrams per kilogram (mg/kg)	0.5 milligrams per liter (mg/L)
Lead	30 mg/kg	1.5 mg/L
Total petroleum hydrocarbons (TPH)	1,500 mg/kg	not applicable

Figure: 30 TAC §335.1(134)(D)(iv)

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i)(1)	Energy Recovery/Fuel S.W. Def. (D)(ii)(2)	Reclamation S.W. Def. (D)(iii)(3)[2]	Speculative Accumulation S.W. Def. (D)(iv)(4)
Spent materials (listed hazardous & not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous)[1]	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous)[1]	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal other than excluded scrap metal (see §335.17(9)) (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(9)) (nonhazardous)[1]	*	*	*	*

NOTE: The terms "spent materials," "sludges," "by-products," "scrap metal," and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

[1] These materials are governed by the provisions of §335.24(h) only.

[2] Except as provided in 40 CFR §261.4(a)(17) for mineral processing secondary materials.

Figure: 30 TAC §335.67(b)

Generator's Name and Address _____

Generator EPA Identification Number _____

Manifest Tracking Number _____

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Transportation (TxDOT), announces the issuance of Request for Proposal (RFP) #303-6-11063. TBPC seeks a 5-year lease of approximately 3,509 square feet of office space in the Austin area, Travis County, Texas.

The deadline for questions is March 20, 2006; and the deadline for proposals is April 6, 2006 at 3:00 P.M. The award date is July 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the revised RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=63721.

TRD-200601586
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 13, 2006

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 3, 2006, through March 9, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 15, 2006. The public comment period for these projects will close at 5:00 p.m. on April 14, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Genesis Producing Company; Location: The project is located in State Tracts (ST's) 135 and 205 of Galveston Bay, Chambers County, Texas. The projects can be located on the U.S.G.S. quadrangle map entitled: Anahuac, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Well #1 (ST 135, S/2) Easting: 322971, Northing: 3271302; Well #2 (ST 135, S/2) Easting: 322722, Northing: 3271208; Well #3 (ST 135, S/2) Easting: 322622, Northing: 3270919; Well #4 (ST 205, N/2) Easting: 316703, Northing: 3274289. Project Description: The applicant proposes to install, operate and maintain well structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. The applicant proposes to construct shell/gravel pads, as required, for each proposed activity. Each pad would typically be 3 feet high and would require the placement of approximately 3,500 cubic yards of shell, crushed rock or washed gravel fill. CCC Project No.: 06-0189-F1; Type of Application: U.S.A.C.E. permit application #24017 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Genesis Producing Company; Location: The project is located in State Tracts (ST's) 135 and 205 of Galveston Bay, Chambers County, Texas. The projects can be located on the U.S.G.S. quadrangle map entitled: Anahuac, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Well #1 (ST 135, S/2) Easting: 322971, Northing: 3271302; Well #2 (ST 135, S/2) Easting: 322722, Northing: 3271208; Well #3 (ST 135, S/2) Easting: 322622, Northing: 3270919; Well #4 (ST 205, N/2) Easting: 316703, Northing: 3274289. Project Description: The applicant proposes to install, operate and maintain well structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. The applicant proposes to construct shell/gravel pads, as required, for each proposed activity. Each pad would typically be 3 feet high and would require the placement of approximately 3,500 cubic yards of shell, crushed rock or washed gravel fill. CCC Project No.: 06-0190-F1; Type of Application: U.S.A.C.E. permit application #24018 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Genesis Producing Company; Location: The project is located in State Tracts (ST's) 135 and 205 of Galveston Bay, Chambers County, Texas. The projects can be located on the U.S.G.S. quadrangle map entitled: Anahuac, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Well #1 (ST 135, S/2) Easting: 322971, Northing: 3271302; Well #2 (ST 135, S/2) Easting: 322722, Northing: 3271208; Well #3 (ST 135, S/2) Easting: 322622, Northing: 3270919; Well #4 (ST 205, N/2) Easting: 316703, Northing: 3274289. Project Description: The applicant proposes to install, operate and maintain well structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. The applicant proposes to construct shell/gravel pads, as re-

quired, for each proposed activity. Each pad would typically be 3 feet high and would require the placement of approximately 3,500 cubic yards of shell, crushed rock or washed gravel fill. CCC Project No.: 06-0191-F1; Type of Application: U.S.A.C.E. permit application #24019 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Genesis Producing Company; Location: The project is located in State Tracts (ST's) 135 and 205 of Galveston Bay, Chambers County, Texas. The projects can be located on the U.S.G.S. quadrangle map entitled: Anahuac, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Well #1 (ST 135, S/2) Easting: 322971, Northing: 3271302; Well #2 (ST 135, S/2) Easting: 322722, Northing: 3271208; Well #3 (ST 135, S/2) Easting: 322622, Northing: 3270919; Well #4 (ST 205, N/2) Easting: 316703, Northing: 3274289. Project Description: The applicant proposes to install, operate and maintain well structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. The applicant proposes to construct shell/gravel pads, as required, for each proposed activity. Each pad would typically be 3 feet high and would require the placement of approximately 3,500 cubic yards of shell, crushed rock or washed gravel fill. CCC Project No.: 06-0192-F1; Type of Application: U.S.A.C.E. permit application #24020 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Lakeland Commercial Properties LP; Location: The project site is located in Galveston Bay, at 1725 State Highway 146, north of Bacliff and south of Kemah, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 305324; Northing: 3268468. Project Description: The applicant is requesting authorization to construct a marina in Galveston Bay. The proposed marina would be partially protected by two, parallel, rock breakwaters. The northern breakwater will measure 1,570 feet long by 65 feet wide. The southern breakwater will be 2,044 feet long by 65 feet wide. Each breakwater will be constructed to a height of 15 feet (8 feet below water and 7 feet above water). The crown of the proposed breakwaters would measure 4 feet wide. Approximately 70,000 cubic yards of fill material and riprap would be discharged into waters of the United States to construct the breakwaters. A pier-supported deck will be constructed parallel to the southern breakwater to provide vehicular access to the slips. A marine fuel station would also be constructed at the east end of the breakwater adjacent to the marina entrance. In addition, the applicant proposes to dredge the proposed marina to a depth of -8 feet mean low tide. Dredging of the marina would result in the removal of approximately 200,000 cubic yards of material, all of which would be placed on adjacent uplands, within a contained disposal area. Between 400 and 500 floating slips will be constructed within the marina. Primary and secondary walkways will float on guide piles and stem from the southern breakwater. Finally, the applicant proposes to erect a 1,056-foot-long retaining wall with an adjoining 15-foot-wide walkway along the shoreline of the property. Excavation along the existing shoreline will be necessary to construct the revetment. No wetlands or vegetated shallows will be impacted as a result of the proposed activity. CCC Project No.: 06-0207-F1; Type of Application: U.S.A.C.E. permit application #24079 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P. O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200601629
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: March 14, 2006

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapters 403, 404, and 2156, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the contract award for outside counsel services for the Texas Treasury Safekeeping Trust Company. The notice of request for letter proposals was published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7919).

The contract was awarded to Andrews Kurth LLP, 111 Congress Avenue, Suite 1700, Austin, Texas 78701. The total amount of the contract shall not exceed $100,000.00. The term of the contract is from March 9, 2006 to January 31, 2007, with option for 3 additional one-year renewals.

TRD-200601577
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: March 10, 2006

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/20/06 - 03/26/06 is 18% for Consumer[1]/Agricultural/Commercial[2] credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/20/06 - 03/26/06 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-200601588

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 13, 2006

♦ ♦ ♦

Texas Council for Developmental Disabilities

Intent to Award

Intent to Award Funds: The Texas Council for Developmental Disabilities (TCDD) announces its intent to award funds to the EveryChild, Inc. Family Based Alternatives Project that will expand and implement services that enable children with disabilities to live with families in Texas.

Background: Prior funding from TCDD and the Health and Human Services Commission enabled the EveryChild, Inc. to develop and implement a family based alternatives model of services that incorporates shared parenting options to assist families with children with severe disabilities and medical situations. Support Families are recruited and prepared to provide a home for the child and share in parenting in partnership with the child's natural family. Funding from TCDD and the Meadows Foundation will enable EveryChild, Inc. to expand these efforts.

Description of Project: EveryChild, Inc. proposes to initiate three new activities with these funds. A Recruitment Consortium will assist with the development of additional provider agencies that offer family-based alternatives; Disability Specialist Recruiters will develop and expand statewide recruitment expertise devoted to finding support families for children with disabilities; and a rural development initiative will focus on assisting children and their families around Gladewater, Texas, to explore alternatives to institutionalization. The project will also coordinate an external evaluation to provide feedback for improvement and to assure an independent voice in recommendations for system change that are based on quality outcomes.

Terms and Funding: Funding for this grant will begin April 1, 2006. Estimated funding will not exceed $175,000 per year for up to three years.

For information regarding this announcement, please contact Patrice A. LeBlanc, Grants Management Director, (512) 437-5435 or e-mail address: **patrice.leblanc@TCDD.state.tx.us.**

TRD-200601543
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: March 10, 2006

♦ ♦ ♦

Intent to Award

Intent to Award Funds: The Texas Council for Developmental Disabilities announces its intent to award funds to the University of North Texas Region VI Community Rehabilitation Program - Regional Continuing Education Program (RCEP) to provide education and outreach to individuals with disabilities concerning the Medicare Part D program.

Background: The Medicare Modernization Act of 2003 made significant changes to the Medicare program, including the addition of a prescription drug benefit known as Medicare Part D. The implementation of this program will have significant implications for those with disabilities who receive Medicare as well as Medicaid. Specifically, those who receive prescription drugs through the Medicaid program, but who are also eligible for Medicare, will be moved to the Medicare drug program on January 1, 2006. Individuals with disabilities may see changes in their medication benefit. The Texas Health and Human Service Commission is working with the Centers for Medicare and Medicaid Services to conduct education and outreach so that individuals are aware of the changes they will face in the next year.

Description of Project: This project will develop: (1) Answers to the Frequently Asked Questions; (2) Information about the various drug plans; and, (3) A list of additional existing sources of information (websites, literature, phone numbers, etc.) such as HHSC, Area Agencies on Aging, and Medicare. The information developed will be in written brochure form as well as available through a website and will be disseminated in a variety of ways.

Terms and Funding: Funding for this grant will end May 31, 2006. Estimated funding will not exceed $16,507 for this grant period.

For information regarding this announcement, please contact Patrice A. LeBlanc, Grants Management Director, (512) 437-5435 or e-mail address: **patrice.leblanc@TCDD.state.tx.us.**

TRD-200601544
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: March 10, 2006

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning Communities in Schools Startup Grant Program, RFA #701-06-012

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-06-012 from eligible entities for the establishment of Communities In Schools (CIS) programs in education service center regions 9, 15, and 16. The following entities are eligible to apply for the Communities In Schools Startup Grant Program: local educational agencies, including public school districts, open-enrollment charter schools, and regional education service centers; community-based organizations; and other public or private entities, non-profit or for-profit. Examples of agencies and organizations eligible under the Communities In Schools Startup Grant Program include, but are not limited to, non-profit agencies, city or county government agencies, faith-based organizations, institutions of higher education, and for-profit corporations. The CIS program established by the startup organization must be developed as a non-profit organization under Internal Revenue Code, §501(c)(3).

Description. The purpose of the Communities In Schools Startup Grant Program is to solicit grant applications for the establishment of a CIS program in each of the three education service center regions currently not served by a CIS program. The three regions include Region 9 (Wichita Falls), Region 15 (San Angelo), and Region 16 (Amarillo). The grantee will serve as the fiscal agent, assist in the establishment of a 501(c)(3) non-profit CIS board, and provide oversight to the board in the development of a fully-operational CIS program. The grantee will be responsible for ensuring the completion of the following four specific program establishment objectives: the development of a CIS board; the development and implementation of the CIS program requirements; the delivery of services to identified school districts; and the completion of necessary paperwork to finish the service delivery. Applicants must demonstrate the capacity to carry out these objectives in the application.

Dates of Project. Applicants should plan for a starting date of no earlier than July 15, 2006, and an ending date of no later than August 31, 2007.

Project Amount. Approximately $750,000 is available for funding the three grants. The grant request may not be greater than $250,000 per grant. This project is funded 100% by Communities In Schools funds authorized by the state legislature.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each statutory requirement as specified in the RFA and receive a basic average score of greater than 70% of the total points to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicant's Conference. Prospective applicants will be provided an opportunity to receive general and clarifying information from TEA about the scope of the Communities In Schools Startup Grant Program on Tuesday, April 4, 2006, from 1:00 p.m. until 4:00 p.m. on the Texas Educational Telecommunication Network (TETN) available at each regional education service center. The conference will be videotaped. Pre-conference questions may be sent to vicki.logan@tea.state.tx.us prior to April 4, 2006. Each person attending will be required to sign a register setting out the representative's name and the name, address, and telephone number of the applicant organization represented. Prospective applicants who are not able to attend the Applicant's Conference may request a copy of the videotape at no charge from the TEA Division of Discretionary Grants using the contact information listed in the "Further Information" section of this notice.

Requesting the Application. A complete copy of RFA #701-06-012 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9269; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Vicki Logan, Division of Discretionary Grants, Texas Education Agency, (512) 475-4468. In order to ensure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA or at the Applicant's Conference will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://www.tea.state.tx.us/opge/disc/index.html.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, May 11, 2006, to be eligible to be considered for funding.

TRD-200601641

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: March 15, 2006

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State Board for Educator Certification

Correction of Error

The State Board for Educator Certification adopted amendments to 19 TAC §§250.1 - 250.3 in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1771). When the rule adoption was published in the searchable Texas Register database and in the *Texas Administrative Code,* subsection (k) of §250.3 was inadvertently omitted. Section 250.3(k) should read as follows:

"(k) Standards for maintaining documentation. The executive director or a designee will maintain all documentation about the purchasing process in accordance with the board's records retention schedule."

The missing text has been restored to the *Texas Administrative Code*.

TRD-200601645

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Texas Commission on Environmental Quality

Notice of District Petition

Notices mailed March 9, 2006 through March 15, 2006:

TCEQ Internal Control No. 02212006-D04; Mac McCoy (Petitioner) filed a petition for creation of Ellis County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property. to be included in the proposed District; (3) the proposed District will contain approximately 448.39 acres located within Ellis County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Ferris, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 482, effective January 20, 2004, the City of Ferris, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, maintain, repair and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control local storm waters; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $28,326,339.

TCEQ Internal Control No. 12212005-D03; Prairie Oaks, LTD. (Petitioner) filed a petition for creation of Oak Point Water Control and Improvement District No. 4 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Ar-

ticle XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 213.355 acres located in Denton County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Oak Point, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2005-06-4R, effective June 20, 2005, the City of Oak Point, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $14,030,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200601642
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 15, 2006

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Notice of Public Hearing on Chapters 37 and 311

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive comments concerning 30 TAC Chapter 311, Watershed Protection, proposed new Subchapter H, Quarry Discharges to the John Graves Scenic Riverway, §§311.71 - 311.82; and 30 TAC Chapter 37, Financial Assurance, proposed new Subchapter W, Financial Assurance for Quarries, §§37.9160, 37.9165, 37.9170, 37.9175, 37.9180, 37.9185, 37.9190, 37.9195, 37.9200, 37.9205, 37.9210, 37.9215, 37.9220, 37.9230, 37.9235, and 37.9240 under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement Senate Bill (SB) 1354, 79th Legislature, 2005. SB 1354 amended the Texas Water Code by adding Chapter 26, Subchapter M, Water Quality Protection Areas. The proposed rulemaking under Chapter 311, Subchapter H, addresses permitting and financial responsibility for quarries located within a water quality protection area in the John Graves Scenic Riverway. The proposed rulemaking under Chapter 37, Subchapter W, establishes additional financial assurance requirements for quarries located within a water quality protection area in the John Graves Scenic Riverway.

A public hearing on this proposal will be held in Mineral Wells on April 6, 2006, at 6:30 p.m. at the Mineral Wells City Hall Annex, Council Chambers, 115 Southwest First Street. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Public Assistance at (512) 239-4000. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-051-037-PR. Comments must be received by 5:00 p.m., April 24, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Kimberly Wilson, Water Quality Division, (512) 239-4644.

TRD-200601538
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 9, 2006

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Notice of Water Quality Applications

The following notices were issued during the period of March 7, 2006 through March 14, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

City of Beaumont and Jefferson County Drainage District No. 6, which operate the City of Beaumont Municipal Separate Storm Sewer System (MS4), have applied for a renewal of NPDES Permit No. TXS000501, which authorizes storm water point source discharges to surface water in the state from the City of Beaumont MS4. This permit will be issued as TPDES Permit No. WQ0004637000. The MS4 is located within the corporate boundary of the City of Beaumont, in Jefferson County, Texas.

City of Beeville has applied for a renewal of TPDES Permit No. WQ0010124002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located adjacent to Poesta Creek, east of U.S. Highway 181 Bypass, north of State Highway 202, south-southeast of the City of Beeville in Bee County, Texas.

City of Corpus Christi has applied for a renewal of TPDES Permit No. WQ0010401006, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day. The application also includes a request to continue the temporary variance to the existing water quality standards for the Nueces River Tidal in Segment No. 2101. The variance is based on the proposed site specific standards that was adopted by the Commission on July 26, 2000, which became effective on August 17, 2001, and is currently awaiting approval from the U.S. Environmental Protection Agency, Region VI. The facility is located at 4101 Allison Drive in the northwest portion of the City of Corpus Christi approximately 1 mile north of Interstate Highway 37 in Nueces County, Texas.

City of Eagle Pass has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10406-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The proposed permit also authorizes the land application of sewage sludge for beneficial use on 146 acres. The anticipated date of the first application of sludge, subject to the issuance of the permit, is June 1, 2006. The facility is located on Farm-to-Market Road 1021 approximately five miles southeast of the intersection of Farm-to-Market Road 375 and Farm-to-Market Road 1021 in Maverick County, Texas.

City of Gladewater has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. 10433-001 to authorize an increase in the discharge of filter backwash effluent from a water treatment plant from a daily average flow not to exceed 17,000 gallons per day to a daily average flow not to exceed 490,000 gallons per day. The facility is located at 1509 East Lake Drive, 3/4 mile north of the City of Gladewater in Upshur County, Texas.

City of Gladewater has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10433-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility is located approximately 600 feet east of Roden Lane, approximately one mile south of the intersection of U.S. Highways 271 and 80 in Gregg County, Texas.

City of Houston has applied for a renewal of TPDES Permit No. WQ0010495076, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 21,000,000 gallons per day. The facility is located approximately 0.25 mile west of the confluence of Cole Creek and Whiteoak Bayou, and approximately 1.5 miles northeast of the intersection of U.S. Highway 290 and Antoine Drive in Harris County, Texas.

City of League City has applied for a major amendment to TPDES Permit No. WQ0010568005 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 7,500,000 gallons per day to an annual average flow not to exceed 12,000,000 gallons per day. The facility is located approximately 0.75 mile northeast of the intersection of State Highway 3 and Farm-to-Market Road 518 in Galveston County, Texas.

Edward Ned Smith, Jr. has applied for a renewal of TPDES Permit No. 11315-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The facility is located adjacent to, and on the east side of State Highway 62, approximately one mile north of the intersection of State Highways 62 and 87 in Orange County, Texas.

GE Packaged Power, Inc. has applied for a renewal of TPDES Permit No. 13365-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 16415 Jacintoport Boulevard in Harris County, Texas.

Lazy River Improvement District has applied for a renewal of TNRCC Permit No. 11820-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 7,500 feet southeast of the intersection of Interstate 45 and Farm-to-Market Road 1488, south of the City of Conroe in Montgomery County, Texas.

P C S Development Company has applied for a renewal of TNRCC Permit No. 11916-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The plant site is located approximately 1,000 feet north of Interstate Highway 10 and 1.7 miles east of the intersection of Interstate 10 and Farm-to-Market Road 1132 in Orange County, Texas.

Star Tubular Services, Inc. and Lone Star Steel Company, which operate a warehouse for the storage of oil country tubular goods, have applied for a renewal of TPDES Permit No. WQ0004059000, which authorizes the discharge of domestic wastewater and wash water at a daily average flow not to exceed 6,500 gallons per day via Outfall 001. The facility is located approximately three miles northwest of the intersection of U.S. Highway 259 and State Highway 250, approximately two and one half miles east of the City of Lone Star, Morris County, Texas.

Westlakes Utility Corporation has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014658001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility is located 2,000 feet west of Loop 1604 and approximately 1,000 feet south of Farm-to-Market Road 143 in Southwest Bexar County, Texas.

TRD-200601643
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 15, 2006

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 24, 2006**.

Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P. O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 24, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Burlington Northern and Santa Fe Railway Company; DOCKET NUMBER: 2005-1891-IHW-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN104474382; LOCATION: Brenham, Washington County, Texas; TYPE OF FACILITY: railroad transport company; RULE VIOLATED: 30 TAC §327.5(c) and §350.91(c), by failing to document spill cleanup; and THSC, §361.603(b)(2) and the Code, §5.702, by failing to pay voluntary cleanup program fees; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Camp Eagle; DOCKET NUMBER: 2005-1854-PWS-E; IDENTIFIER: RN103203063; LOCATION: Rocksprings, Edwards County, Texas; TYPE OF FACILITY: recreational camp; RULE VIOLATED: 30 TAC §290.44(d), by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.39(c), by failing to receive approval prior to beginning construction of a public drinking water system; 30 TAC §290.43(c)(1) - (10), by failing to meet the current American Waterworks Association design and construction standards on ground storage tanks; and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine bacteriological samples; PENALTY: $1,885; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Dal-Tile Corporation; DOCKET NUMBER: 2006-0013-AIR-E; IDENTIFIER: RN100542976; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: ceramic tile manufacturing; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(B) and (C), and 122.146(2), Federal Operating Permit Number O-02420, and THSC, §382.085(b), by failing to submit an annual compliance certification and by failing to submit the semi-annual deviation reports; PENALTY: $5,880; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: Enbridge Pipelines East Texas, L.P.; DOCKET NUMBER: 2005-1809-AIR-E; IDENTIFIER: RN100224914; LOCATION: Lanley, Freestone County, Texas; TYPE OF FACILITY: natural gas treating; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 31352, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $4,880; ENFORCEMENT COORDINATOR: Amy Burgess, (512) 239-2540; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Enbridge Pipelines East Texas, L.P.; DOCKET NUMBER: 2005-1941-AIR-E; IDENTIFIER: RN100224914; LOCATION: Lanley, Freestone County, Texas; TYPE OF FACILITY: natural gas treating; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an emissions event notification; and 30 TAC §116.115(b), Air Permit Number 31352, and THSC, §382.085(b), by failing to prevent unauthorized emissions of sulfur dioxide, nitrogen dioxide, nitrogen oxide, carbon monoxide, and natural gas; PENALTY: $2,600; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3423; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Enchanted Harbor Utility; DOCKET NUMBER: 2005-1922-PWS-E; IDENTIFIER: RN101442556; LOCATION: El Campo, Wharton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: $318; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: FSSM Limited Partnership dba Franklin Square Section 2; DOCKET NUMBER: 2005-0212-EAQ-E; IDENTIFIER: RN102727278; LOCATION: San Marcos, Hays County, Texas; TYPE OF FACILITY: real property; RULE VIOLATED: 30 TAC §213.4(a)(1) and (k) and Edwards Aquifer Protection Plan (EAPP) Number 99052804, by failing to obtain approval of an EAPP prior to commencing construction of a sewage collection system, by failing to maintain the construction exit and allowed dirt from trucks and other vehicles to be carried off site and into the streets, and by failing to maintain a copy of EAPP Number 99052804 and its approval letter on site; and 30 TAC §213.5(c)(3)(K) and (f)(2)(B), by failing to suspend construction activities near two geologic features until approval of the geologic assessment report; PENALTY: $20,520; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(8) COMPANY: Hewlett Holdings, Limited; DOCKET NUMBER: 2005-1986-EAQ-E; IDENTIFIER: RN104498118; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: car dealership; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval for an EAPP prior to commencing construction over the recharge zone of the Edwards Aquifer; and 30 TAC §213.5(f)(1), by failing to submit written notification of intent to commence construction; PENALTY: $4,920; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Hope Agri Products of Texas, Limited; DOCKET NUMBER: 2005-1979-AIR-E; IDENTIFIER: RN101797256; LOCATION: Powderly, Lamar County, Texas; TYPE OF FACILITY: bark grinding plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and/or modify an existing facility; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent dust and bark mulch emissions from causing a nuisance condition; PENALTY: $12,800; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5145; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Syed N. Hyder; DOCKET NUMBER: 2005-1895-MWD-E; IDENTIFIER: RN102097789; LOCATION: College Station, Brazos County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), (5), and (9)(A), §317.4(d) and (g), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011778001, and the Code, §26.039(b) and §26.121(a), by failing to properly operate the wastewater treatment system and prevent the unauthorized discharge of wastewater and by failing to provide an adequate description of an unauthorized discharge in a noncompliance notification report; PENALTY: $12,800; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Jon-Lin Corporation; DOCKET NUMBER: 2005-1947-MLM-E; IDENTIFIER: RN102276797; LOCATION: Marlin, Falls County, Texas; TYPE OF FACILITY: industrial food packaging; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain a storm water permit; the Code, §26.121(a), by failing to prevent the discharge of a liquid substance into waters in the state; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent a nuisance condition; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: J. W. Turner Construction, Inc. dba James W. Turner Construction Limited; DOCKET NUMBER: 2006-0094-MSW-E; IDENTIFIER: RN104812748; LOCATION: San Patricio, San Patricio County, Texas; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §330.5(c), by failing to dispose of municipal solid waste at an authorized facility; PENALTY: $600; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: Oak Tree Properties, Inc. dba Oak Tree Deli; DOCKET NUMBER: 2005-1640-PST-E; IDENTIFIER: RN101888600; LOCATION: Cuero, Dewitt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and the Code, §26.3475(a) and (c)(1), by failing to provide proper release detection, by failing to have the line leak detectors tested for performance and operational reliability, and by failing to conduct reconciliation of detailed inventory records; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding underground storage tank fees; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: Penreco; DOCKET NUMBER: 2005-1902-AIR-E; IDENTIFIER: RN100221282; LOCATION: Dickinson, Galveston County, Texas; TYPE OF FACILITY: petroleum production; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit a deviation report; 30 TAC §116.115(c), Air Permit Number 36481, and THSC, §382.085(b), by failing to repair a leaking component and by failing to have each open-ended line equipped with a cap, blind flange, plug, or a second valve; and 30 TAC §116.115(b), Air Permit Number 36481, and THSC, §382.085(b), by failing to keep records of repairs made to close open-ended lines; PENALTY: $16,600; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Sabine Cogen, L.P.; DOCKET NUMBER: 2005-1658-AIR-E; IDENTIFIER: RN100209766; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: combined-cycle cogeneration plant; RULE VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), Air Permit Number 36889, Federal Operating Permit Number O-01843, and THSC, §382.085(b), by failing to timely submit quarterly continuous emission monitoring system reports; and 30 TAC §§122.143(4), 122.145(2)(A) and (C), and 122.146(2), and THSC, §382.085(b), by failing to submit a timely annual compliance certification and its associated deviation report; PENALTY: $8,832; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2005-1255-MWD-E; IDENTIFIER: RN102078755; LOCATION: Burleson, Johnson County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 12952001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total suspended solids and by failing to submit the annual sludge reports; PENALTY: $3,576; ENFORCEMENT COORDINATOR: Joseph Daley, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2005-1554-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 19465, and THSC, §382.085(b), by failing to route waste streams which resulted in unauthorized alkyphenol emissions; and 30 TAC §122.143(4) and THSC, §382.085(b), by failing to amend Federal Operating Permit Number O-01930 to include emission point numbers covered by Air Permit Number 71546; PENALTY: $42,720; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Timberlane Estates Property Owners Association, Inc.; DOCKET NUMBER: 2005-1717-PWS-E; IDENTIFIER: RN101178531; LOCATION: Hemphill, Sabine County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.89(a)(4), by failing to have one meter for each residential, commercial, or industrial service connection; 30 TAC §290.46(q)(1), by failing to issue a boil water notice; and 30 TAC §290.41(c)(1)(A), by failing to ensure the well site is not located within 150 feet of a perforated drainfield or obtain an exemption to the rule; PENALTY: $832; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Zoltek Corporation; DOCKET NUMBER: 2005-1983-IWD-E; IDENTIFIER: RN100543867; LOCATION: Abilene, Taylor County, Texas; TYPE OF FACILITY: carbon fiber manufacturing; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of non-hazardous industrial wastewater; PENALTY: $640; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200601604
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 14, 2006

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Medicaid Increase in Payment Percentage for Services Provided by Nurse Practitioners, Clinical Nurse Specialists, Certified Nurse Midwives, and Certified Registered Nurse Anesthetists

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on March 31, 2006, to receive public comment on the proposed Medicaid increase in payment percentage for services provided by nurse practitioners (NPs), clinical nurse specialists (CNSs), certified nurse midwives (CNMs), and certified registered nurse anesthetists (CRNAs). The increase in payment percentage is proposed to be retroactively effective March 1, 2006. The hearing will be held in compliance with Chapter 32 of the Human Resources Code, §32.0282, which requires public hearings on proposed Medicaid fees/rates. The public hearing will be held on March 31, 2006, at 1:30 p.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the building entrance facing Metric Boulevard. Written comments regarding the proposed increase in payment percentage may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U. S. mail to the attention of Joyce Felix, HHSC Rate Analysis, MC H-400, P. O. Box 85200, Austin, Texas 78708-5200. Express mail can be sent or written comments can be hand delivered to Ms. Felix, HHSC Rate Analysis, MC H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Felix at (512) 491-1966 or via E-mail at joyce.felix@hhsc.state.tx.us. Interested parties may request to have mailed, E-mailed, or faxed to them, or may pick up a briefing packet concerning the proposed fees by contacting Joyce Felix, HHSC Rate Analysis, MC H-400, via E-mail or facsimile.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Joyce Felix, HHSC Rate Analysis, by close of business on March 29, 2006, so that appropriate arrangements are made.

TRD-200601644
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 15, 2006

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 06-019, Amendment Number 737, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The purpose of this amendment is to increase the personal needs allowance for long-term care facility residents from $45 to $60. The proposed amendment is effective January 1, 2006.

The proposed amendment is estimated to result in expenditures of $8,542,560 for State Fiscal Year (SFY) 2006, of which $4,279,546 is state funds and $4,263,014 is federal matching funds. For SFY 2007, the estimated expenditures are $12,801,060, of which $6,390,314 is state funds and $6,410,746 is federal matching funds.

To obtain copies of the proposed amendment, interested parties may contact Dee Church by mail at Office of Family Services, Texas Health and Human Services Commission, P. O. Box 12668, Mail Code 2090, Austin, Texas 78711-2668; by phone at (512) 206-5325; by fax at (512) 206-5211; or by e-mail at dee.church@hhsc.state.tx.us.

Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200601569
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 10, 2006

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Public Notice Correction

A notice was published in the March 10, 2006, *Texas Register* (31 TexReg 1811) announcing the Texas Health and Human Services Commission's intent to modify the state plan to add physician assistants as providers of medical services. The current notice serves as a correction to the notice published on March 10, 2006.

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 06-013, Amendment Number 731, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The purpose of this amendment is to add program policy and reimbursement methodology for Medicaid services provided by physician assistants (PAs) in response to the 2006-07 General Appropriations Act (Article II, Health and Human Services Commission, Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005). The proposed amendment is effective July 1, 2006.

The proposed amendment is estimated to have no fiscal impact on state or federal funding.

To obtain copies of the proposed amendment, interested parties may contact Barbara Davenport, Policy Assistant, by mail at Policy Development Support, Medicaid/CHIP Division, Texas Health and Human Services Commission, P. O. Box 85200, H-600, Austin, Texas 78708-5200; by telephone at (512) 491-1104; by facsimile at (512) 491-1953; or by e-mail at Barbara.Davenport@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200601568
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 10, 2006

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Texas Department of Housing and Community Affairs

Announcement of the 2006 Public Hearing Schedule for Comment on the 2006 Multifamily Applications

The mission of the Texas Department of Housing and Community Affairs (Department) is to help Texans achieve a higher quality of life by building better communities. Through our rental production programs, the Department encourages the new construction or rehabilitation of high-quality multifamily housing, primarily through private developers. These developments benefit Texans by providing qualified families with safe, affordable, quality housing.

The following 13 public hearings are provided to gather public comment on the 2006 Multifamily Applications. The schedule of these meetings is provided below:

San Antonio, Region 9

Monday, April 3, 2006

12:00 p.m.
City Council Chambers
114 W. Commerce
San Antonio, TX 78205
(210) 207-8109
www.sanantonio.gov
Austin, Region 7
Monday, April 3, 2006
6:00 p.m.
William B. Travis Building, Room 1-111
1701 N. Congress
Austin, Texas 78701
(512) 463-3585
www.tbpc.state.tx.us
Waco, Region 8
Tuesday, April 4, 2006
11:00 a.m.
Heart of Texas Council of Governments Board Room
300 Franklin
Waco, TX 76701
(254) 756-7822
www.hotcoq.org
San Angelo, Region 12
Tuesday, April 4, 2006
12:00 p.m.
City Council Chambers
72 West College Avenue
San Angelo, TX 76902
(325) 657-4241
www.sanangelotexas.us
Lubbock, Region 1
Wednesday, April 5, 2006
3:00 p.m.
Mahon Public Library, 2nd Floor
1306 9th Street
Lubbock, TX 79401
(806) 775-2826
www.library.ci.lubbock.tx.us
Dallas, Region 3
Wednesday, April 5, 2006
7:00 p.m.
Dallas Public Library Auditorium
1515 Young Street
Dallas, TX 75201
(214) 670-1400
www.dallaspubliclibrary.org
Wichita Falls, Region 2
Thursday, April 6, 2006
10:00 a.m.
Nortex Regional Planning Commission
4309 Jacksboro Hwy., Ste. 200
Wichita Falls, TX 76302
(940) 322-5281
www.nortexrpc.org
Corpus Christi, Region 10
Friday, April 7, 2006
10:00 a.m.
Council Chambers, Committee Room
City Hall, 1201 Leopard
Corpus Christi, TX 78401
(361) 826-3105
www.cctexas.com
Harlingen, Region 11
Friday, April 7, 2006
3:00 p.m.
Harlingen Public Library Auditorium
410 76th Drive
Harlingen, TX 78550
(956) 430-6650
Houston, Region 6
Monday, April 10, 2006
6:00 p.m.
City Hall Annex Chambers
900 Bagby, Public Level
Houston, TX 77002
(713) 247-1840
www.houstontx.gov
Lufkin, Region 5
Wednesday, April 12, 2006
9:00 a.m.
City Council Chambers
300 East Shepherd (Entrance on 3rd Street)
Lufkin, TX 75904
(936) 633-0244
www.cityoflufkin.com
Longview, Region 4

Wednesday, April 12, 2006

2:00 p.m.

Longview Public Library, Moeschelle Room

222 West Cotton Street

Longview, TX 75601

(903) 237-1341

www.longviewlibrary.com

El Paso, Region 13

Wednesday, April 12, 2006

6:00 p.m.

El Paso County Courthouse

The Commissioners Court Room, 3rd Floor

500 E. San Antonio

El Paso, TX 79901

(915) 546-2009

www.epcounty.com

A detailed log of all 2006 Applications will be posted to the Department's website at the following link: http://www.tdhca.state.tx.us.

Written comments are also encouraged. Such comments should be addressed to:

Multifamily Finance Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, Texas 78711-3941

For additional information, you may contact the Multifamily Division at (512) 475-3440 or visit the program's web site at www.tdhca.state.tx.us.

Individuals who require a language interpreter for the hearing should contact Jorge Reyes at (512)475-4577 at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados. Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200601653
William Dally
Interim Executive Director
Texas Department of Housing and Community Affairs
Filed: March 15, 2006

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Revised Public Comment Period and Hearing Schedule for U.S. Department of Housing and Urban Development (HUD) Consolidated Planning Documents Required to Provide Hurricane Disaster Relief Assistance for the State of Texas

The Texas Department of Housing and Community Affairs (TDHCA) and the Office of Rural Community Affairs (ORCA) announce public comment periods and a combined hearing schedule to gather input on the following HUD required plans. This notice includes revisions to the previous Texas Register notice dated March 10, 2006. The revisions are (1) the change of the public comment period for the Texas Action Plan for Disaster Recovery from March 10 through March 27, 2006, to March 14 through March 30, 2006 and (2) the addition of a public hearing in Houston. This information is included below.

The public comment period pertains to the following plans:

Amendments to the *2005-2009 State of Texas Consolidated Plan* and *2006 Consolidated Plan One Year Action Plan* to Provide Hurricane Disaster Relief Assistance. These amendments are required to more fully utilize HOME funding for disaster relief assistance. The public comment period for this document runs March 10, 2006, through April 10, 2006.

Development of a Texas Action Plan for Disaster Recovery. This plan is required to utilize HUD Community Development Block Grant funding associated with the Department of Defense Appropriations Act, 2006 (Public Law 109-148, approved December 30, 2005). The public comment period for this document runs March 14, 2006 through March 30, 2006. Note that this document has a shorter public comment period as allowed by a HUD waiver.

As of March 14, 2006, both of these documents are available for review on the following websites: www.tdhca.state.tx.us and www.orca.state.tx.us. Printed copies of the documents will be available upon request by calling (512) 475-3976.

Public hearings will be held at the following times and locations:

Nacogdoches

Nacogdoches Recreation Center

1112 North Street, Room 2

Nacogdoches, TX 75961

March 20, 2006, 6:00 p.m.

Beaumont

South East Texas Regional Planning Commission

2210 Eastex Freeway

Beaumont, TX 77703

March 21, 2006, 10:00 a.m.

Livingston

Livingston Municipal Complex

200 W. Church Street

Livingston, TX 77351

March 22, 2006, 10:00 a.m.

Austin

Stephen F. Austin Building

1700 N. Congress Avenue, Room 170

Austin, TX 78701

March 22, 2006, 6:00 p.m.

Houston

Harris County Jury Assembly Room

1019 Congress, 1st Floor

Houston, TX 77002

March 28, 2006, 6:00 p.m.

Public comment will be accepted directly at the public hearings, by mail, or via e-mail to the addresses below.

For comment on housing related activities:

TDHCA

Division of Policy and Public Affairs

P. O. Box 13941

Austin, TX 78711-3941

Fax: (512) 469-9606

E-mail: info@tdhca.state.tx.us

For comment on community development related activities:

ORCA

Attention: Oralia Cardenas

P. O. Box 12877

Austin, TX 78711

Fax: (512) 963-6776

E-mail: ocardenas@orca.state.tx.us

For more information on the hearings, contact TDHCA at (512) 475-3976.

Individuals who require a language interpreter for the hearing should contact Jorge Reyes at least three days prior to the hearing date. Personas que hablan espanol y requieren un interprete, favor de llamar a Jorge Reyes al siguiente numero (512) 475-4577 por lo menos tres dias antes de la junta para hacer los preparativos apropiados. Individuals who require auxiliary aids or services should contact Gina Esteves, ADA-Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days prior to the scheduled hearing so that appropriate arrangements can be made.

TRD-200601654
William Dally
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 15, 2006

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by AMERIPRISE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in De Pere, Wisconsin.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200601648
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 15, 2006

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Texas Lottery Commission

Instant Game Number 653 "Bonus Blackjack"

1.0 Name and Style of Game.

A. The name of Instant Game No. 653 is "BONUS BLACKJACK". The play style is "beat score with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 653 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 653.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $1,000, and $25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 653 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$1,000	ONE THOU
$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 653 - 1.2E

CODE	PRIZE
TWO	$2.00
FIV	$5.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $5.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize - A prize of $1,000 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine

(9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (653), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 653-0000001-001.

L. Pack - A pack of "BONUS BLACKJACK" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS BLACKJACK" Instant Game No. 653 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS BLACKJACK" Instant Game is determined once the latex on the ticket is scratched off to expose 33 (thirty-three) Play Symbols. If a player's total in any Hand beats the Dealer's Hand total, the player wins prize shown for that hand. If any Hand totals 21, the player wins 5 times the prize shown for that hand. If the Dealer busts (Dealer's Hand totals more than 21), the player wins all 10 prizes automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 33 (thirty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 33 (thirty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 33 (thirty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 33 (thirty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate hands in the same order on a ticket.

C. No more than one pair of duplicate non-winning prize symbols on a ticket.

D. Hand 1 through Hand 10 totals will equal 21 only as designated by the 5X levels on the prize structure.

E. The Dealer's Hand will never total 21.

F. The Dealer's Hand will total more than 21 only as designated by the BUST levels on the prize structure.

G. Non-winning prize symbols will not match a winning prize symbol.

H. There will be no ties between the Dealer's Hand total and any Hand total.

I. No hand will contain two aces.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BLACKJACK" Instant Game prize of $2.00, $5.00, $8.00, $10.00, $20.00, $50.00, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied; and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BLACKJACK" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BLACKJACK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BONUS BLACKJACK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BONUS BLACKJACK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 653. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 653 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	996,960	8.06
$5	482,400	16.67
$8	128,640	62.50
$10	80,400	100.00
$20	56,280	142.86
$50	32,160	250.00
$200	4,422	1,818.18
$1,000	395	20,354.43
$25,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.51. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 653 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 653, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601599
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 14, 2006

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Instant Game Number 655 "Payday"

1.0 Name and Style of Game.

A. The name of Instant Game No. 655 is "PAYDAY". The play style is "key number match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 655 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 655.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, BAG OF MONEY SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $30.00, $50.00, $300, $3,000, or $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 655 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
BAG OF MONEY SYMBOL	WINALL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$300	THR HUND
$3,000	THR THOU
$30,000	30 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 655 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $300.

I. High-Tier Prize - A prize of $3,000 or $30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (655), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 655-0000001-001.

L. Pack - A pack of "PAYDAY" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PAYDAY" Instant Game No. 655 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "PAYDAY" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS to either of the PAYDAY NUMBERS, the player wins the prize shown for that number. If the player reveals a MONEY BAG SYMBOL, the player wins ALL 10 PRIZES shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than one pair of non-winning prize symbols on a ticket.

C. No duplicate non-winning Your Numbers play symbols on a ticket.

D. No duplicate Payday Numbers play symbols on a ticket.

E. The money bag symbol will only appear as dictated be the prize structure and only once on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "PAYDAY" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PAYDAY" Instant Game prize of $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PAYDAY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "PAYDAY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "PAYDAY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 655. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 655 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,021,080	7.87
$4	554,760	14.49
$5	96,480	83.33
$10	104,520	76.92
$20	32,160	250.00
$50	34,103	235.76
$300	6,097	1,318.68
$3,000	52	154,615.38
$30,000	11	730,909.09

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.35. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 655 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 655, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601600
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 14, 2006

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Instant Game Number 657 "Winning Numbers"

1.0 Name and Style of Game.

A. The name of Instant Game No. 657 is "WINNING NUMBERS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 657 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 657.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $1.00, $2.00, $5.00, $10.00, $20.00, $25.00, $50.00, $250, $2,500, or $25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 657 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$250	TWO FTY
$2,500	25 HUND
$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 657 - 1.2E

CODE	PRIZE
TWO	$2.00
FIV	$5.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $5.00, $10.00, $12.00, or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, or $250.

I. High-Tier Prize - A prize of $2,500 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (657), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 657-0000001-001.

L. Pack - A pack of "WINNING NUMBERS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WINNING NUMBERS" Instant Game No. 657 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WINNING NUMBERS" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If the player matches any of YOUR NUMBERS to either WINNING NUMBER, the player wins the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than one pair of non-winning prize symbols on a ticket.

C. No duplicate non-winning Your Numbers play symbols on a ticket.

D. No duplicate Winning Numbers play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "WINNING NUMBERS" Instant Game prize of $2.00, $5.00, $10.00, $12.00, $20.00, $25.00, $50.00, or $250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $50.00, or $250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WINNING NUMBERS" Instant Game prize of $2,500 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WINNING NUMBERS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WINNING NUMBERS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WINNING NUMBERS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 657. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 657 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	1,093,440	7.35
$5	225,120	35.71
$10	112,560	71.43
$12	64,320	125.00
$20	112,560	71.43
$25	32,160	250.00
$50	21,239	378.55
$250	3,350	2,400.00
$2,500	54	148,888.89
$25,000	6	1,340,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 657 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 657, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601587
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 13, 2006

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Instant Game Number 678 "$250,000 Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 678 is "$250,000 RICHES". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 678 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 678.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 10X SYMBOL, SEVEN SYMBOL, CLOVER SYMBOL, HORSESHOE SYMBOL, LEMON SYMBOL, BANANA SYMBOL, POT OF GOLD SYMBOL, WATERMELON SYMBOL, CHERRY SYMBOL, APPLE SYMBOL, GRAPE SYMBOL, BELL SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, BAG OF MONEY SYMBOL, COIN SYMBOL, STACK OF BILLS SYMBOL, BAR SYMBOL, BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250, $500, $1,000, $10,000, $25,000, $100,000, and $250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 678 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
10X SYMBOL	WINX10
SEVEN SYMBOL	SEVN
CLOVER SYMBOL	CLVR
HORSESHOE SYMBOL	SHOE
LEMON SYMBOL	LEMN
BANANA SYMBOL	BNNA
POT OF GOLD SYMBOL	GOLD

WATERMELON SYMBOL	MELN
CHERRY SYMBOL	CHRY
APPLE SYMBOL	APPL
GRAPE SYMBOL	GRPE
BELL SYMBOL	BELL
CROWN SYMBOL	CRWN
DIAMOND SYMBOL	DMND
BAG OF MONEY SYMBOL	BAG
COIN SYMBOL	COIN
STACK OF BILLS SYMBOL	DLRS
BAR SYMBOL	BAR
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SDLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HRSE
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTEEN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUND
$1,000	ONE THOU
$10,000	TEN THOU
$25,000	25 THOU
$100,000	HUN THOU
$250,000	TFY THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 678 - 1.2E

CODE	PRIZE
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number

is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $250, or $500.

I. High-Tier Prize - A prize of $1,000, $10,000, or $250,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (678), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 678-0000001-001.

L. Pack - A pack of "$250,000 RICHES" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$250,000 RICHES" Instant Game No. 678 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$250,000 RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 73 (seventy-three) Play Symbols. In GAME 1, if a player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins the PRIZE shown for that number. If the player reveals a 10X SYMBOL, the player wins 10 TIMES THE PRIZE shown for that symbol instantly. In GAME 2, if the player reveals 3 matching symbols within a Pull, the player wins the PRIZE shown for that pull. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 73 (seventy-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 73 (seventy-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 73 (seventy-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 73 (seventy-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No duplicate non-winning Your Numbers play symbols.

C. Game 1: Non-winning prize symbols will never be the same as the winning prize symbol(s).

D. Game 1: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

E. Game 1: No more than 2 like non-winning prize symbols.

F. Game 1: No duplicate Winning Numbers play symbols.

G. Game 2: No non-winning pull will repeat, in any order, the symbols of another non-winning pull on the same ticket.

H. Game 2: No three identical adjacent non-winning symbols in a vertical column.

I. Game 2: Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. Game 2: No more than 2 like non-winning prize symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "$250,000 RICHES" Instant Game prize of $10.00, $15.00, $20.00, $50.00, $100, $250, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, $250, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$250,000 RICHES" Instant Game prize of $1,000, $10,000, or $250,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$250,000 RICHES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$250,000 RICHES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$250,000 RICHES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 678. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 678 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	660,000	4.55
$15	180,000	16.67
$20	150,000	20.00
$50	60,000	50.00
$100	21,000	142.86
$250	6,250	480.00
$500	2,375	1,263.16
$1,000	32	93,750.00
$10,000	6	500,000.00
$250,000	3	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 2.78. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 678 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 678, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601601
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 14, 2006

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Texas Board of Professional Engineers

Joint Advisory Committee Joint Statement

The Texas Board of Architectural Examiners (TBAE) and the Texas Board of Professional Engineers (TBPE) recognize that it is statutorily required and in the public interest to engage competent professionals in building design. To this end, both Boards have agreed to this public statement regarding the outcome of Attorney General Opinion GA-391, regarding building design.

Attorney General Opinion GA-391 held that architecture and engineering are regulated as distinct professions under the law in the State of Texas. It also recognized that there is a limited overlap of the two professions in the area of building design. The TBPE and the TBAE together recognize that, while GA-391 has not specified the services or work encompassed within the scope of the overlap, it has focused the discussion to issues of the education, experience, and training of each profession in providing a particular service or work.

Both Boards believe it is imperative that architects and engineers continue to work together through the Joint Advisory Process to address and resolve issues of overlapping practice and to assist each other in investigations involving potential overlap issues. It is recognized that contradictory interpretations of the overlap by the Boards would work a disservice to the people of Texas, as well as each profession. Both Boards recognize that the Joint Advisory Committee will issue advisory opinions specifying the services and work which architects and engineers, respectively, are qualified to render and make recommendations to their respective Boards. Each Board pledges to refer all matters involving issues of the overlap to the Joint Advisory Committee.

We encourage the professional engineering and architectural communities to continue to work together and respect the competencies and capabilities of both professions.

To see the full text of the Opinion, go to:

www.oag.state.tx.us/opinions/ga/ga0391.pdf

TRD-200601542
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: March 10, 2006

♦ ♦ ♦

Policy Advisory Opinion Regarding Comprehensive Building Design

30 day comment period

The Texas Board of Professional Engineers (Board) is given authority to issue advisory opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

The Board issued an Advisory Opinion regarding Comprehensive Building Design on August 11, 2005. Based on updated information, the Board rescinded the policy on February 24, 2006. The Board would like comments from stakeholders on the new language for the policy. The new language is included below.

Executive Summary: The Texas Board of Professional Engineers (Board) has been asked to determine if the practice of engineering includes comprehensive and complete design of buildings by a competent engineer without the services of an architect. Attorney General (AG) Greg Abbott has released an opinion (GA-391) which provides additional information related to this policy advisory. The AG opinion states that building design can be performed exclusively by an engineer if the "adequate performance of the particular service or work in connection with that project requires a person with engineering education, training, and experience." The opinion goes on to state that "whether an adequate performance of a particular service or work requires a person with engineering education, training, and experience is a question of fact."

The Board has determined pursuant to the Advisory Opinion process outlined in Texas Administrative Code, Title 22, Part 6, Chapter 131, Subchapter G, based on the present statute and rules, in addition to Attorney General opinions DM-161 and GA-391, that an engineer may engage in comprehensive and complete building design of a project without the involvement of an architect if the adequate performance of the particular service or work in connection with that project requires a person with engineering education, training, and experience.

The Board does recognize that architects have broad authority to manage and oversee building projects, which may include building design. Nothing in this opinion is intended to limit an architect's ability under their statutory authorization.

Discussion: The statute under Texas Occupations Code, Title 6, Subtitle A, Chapter 1001 (§1001.003) also known as the Texas Engineering Practice Act (Act), specifies that design is the practice of engineering and that a building is listed in conjunction with design under this section of the law. This opinion is based on the information contained in the Act as it relates to engineers, while not prohibiting building design by architects who are bound by the laws and rules of the Texas Board of Architectural Examiners (TBAE). The Act defines what is engineering and an excerpt from the beginning of the law in §1001.003 explains, in part: (bold added for emphasis)

Section 1001.003 Practice of Engineering

(c) The practice of **engineering includes:**

(10) a service, **design**, analysis, or other work performed for a public or private entity **in connection with a** utility, structure, **building**, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature;

Buildings can be grouped into public works and private works as mentioned in various sections of the Act. This separation allows for further clarification of applicable law as it relates to these two categories. Engineering aspects of a public works project must be designed and constructed under the supervision of a licensed professional engineer, unless exempted under the Act.

When is building design exempted under the Act?

Under the Act, there are several sections that provide exemptions from the licensure requirements when working on building projects. Specifically, §1001.053 contains some specific exemptions from the Act for public works projects, depending on the type of project and monetary value. Also, §1001.056 describes building projects for the private sector and defines when an engineer is not required to be involved with the building project.

Legislative Intent

Under §1001.004(b) of the Act, there is a description of the legislative purpose and intent as follows:

(b) The purpose of this chapter is to:

(1) protect the public health, safety, and welfare;

(2) enable the state and the public to identify persons authorized to practice engineering in this state; and

(3) fix responsibility for work done or services or acts performed in the practice of engineering.

In addition to specifying the purpose and intent of the statute, there are sections that also allow other individuals to perform work without being in violation of the Act. In other words, architects may design buildings without creating a situation where there would necessarily be a violation of the Act; however, the laws and rules of the TBAE would still apply to them, unless exempted. This is addressed in §1001.004(e) of the Act:

(e) This chapter does not:

(1) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

Texas Engineering Practice Act Authority

The Board has the authority to issue an advisory opinion as stated in §1001.601: but under §1001.603, it does not affect the authority of the Attorney General to issue an opinion as authorized by law. Attorney General opinion DM-161, dated August 27, 1992, relating to the construction of Section 16 of Article 249a, V.T.C.S., the act regulating the practice of architecture, was requested by TBAE. In that opinion, Attorney General Dan Morales opined that the professions of architects and engineers overlap. In summary, General Morales opined that the statute regulating the practice of architecture "does not bar a licensed professional engineer licensed under article 3271a, V.T.C.S., [the predecessor to the current Engineering Practice Act] from preparing plans and specifications, the preparation of which requires the application of engineering principles and the interpretation of engineering data" for a public building. In other words, a professional engineer is not prohibited from being the design professional for construction or modification of buildings. Attorney General Opinion GA-391, dated January 10, 2006, further addresses the issue of overlap between the professions of architects and engineers concerning building design. General Abbott states that whether an engineer may engage in comprehensive and complete building design without the involvement of an architect "depend[s] on whether the adequate performance of the particular service or work in connection with that project requires a person with engineering education, training, and experience". He further states that "whether adequate performance of a particular service or work requires a person with engineering education, training, and experience is a question of fact."

Comments will be received for 30 days from the date of publication of this notice in the *Texas Register*. Comments should be directed to:

Texas Board of Professional Engineers

1917 IH 35 South

Austin, Texas 78741

Attention: Policy Advisory Staff

Or by e-mail to: peboard@tbpe.state.tx.us

TRD-200601640
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: March 15, 2006

♦ ♦ ♦

Request for Stakeholders

The Texas Board of Professional Engineers (Board) is given authority to issue advisory opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

Pursuant to that requirement, the Board hereby notifies potential stakeholders that it has initiated the process to develop an advisory opinion regarding commissioning building systems. There may be some overlap between engineering and commissioning agents roles and responsibilities. The request asks for a determination of the aspects of commissioning a building that would require the services of a licensed professional engineer. There are guidelines developed by the American Society of Heating, Refrigeration, and Air Conditioning Engineers that describe the commissioning process. In addition, the United States Green Building Council has developed a program called Leadership in Energy and Environmental Design that has guidance on commissioning of building energy systems. There is also an Association of Air Balance Council that describes the requirements of Commissioning Authorities and these authorities include, but are not limited to, professional engineers. Several of these organizations have guidelines specifying the requirements of the commissioning authority. The Board has developed a stakeholder process to gather information from professional engineers and consultants and other interested parties. The policy advisory will be written with consideration given to stakeholder comments. This notice is intended to generate a list of possible stakeholders and to initiate public comment. The Board plans to schedule a stakeholder meeting no later than May 2006. Stakeholder contact information and comments received during the posting period will be considered in the policy advisory and the scheduling of the stakeholder meeting. Comments and stakeholder information should be directed to:

Texas Board of Professional Engineers

1917 IH 35 South

Austin, Texas 78741

Attention: Policy Advisory Staff

Or by e-mail to: peboard@tbpe.state.tx.us

TRD-200601639
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: March 15, 2006

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Amendment to Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 10, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016. A summary of the application follows.

Project Title and Number: Application of Time Warner Entertainment-Advance/Newhouse Partnership, doing business as Time Warner Cable, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32501 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32501.

TRD-200601625
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 14, 2006

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 6, 2006, Intrado, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60317. Applicant intends to reflect a change in ownership/control in which it will become a wholly-owned subsidiary of West Corporation.

The Application: Application of Intrado, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32482.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 29, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32482.

TRD-200601574
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2006

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 7, 2006, Electric Lightwave, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60273. Applicant intends to reflect a change in ownership/control whereby Integra Telecom Holdings, Inc. will acquire direct control of Electric Lightwave, LLC.

The Application: Application of Electric Lightwave, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32487.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 29, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32487.

TRD-200601576
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2006

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Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Dallas County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 10, 2006, for a certificate of convenience and necessity for a proposed transmission line in Dallas County, Texas.

Docket Style and Number: Application of TXU Electric Delivery Company for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Dallas County, Texas. Docket Number 32455.

The Application: The project is designated the West Levee - Norwood 345 kV Transmission Line Project. The Applicant stated this project is needed because the demand for electric power in Dallas County continues to increase. This growth in load is stressing the capability of the existing transmission system. The right-of-way for this project will be approximately 6.5 miles. The estimated cost for the project is $21,100,000. The estimated date to energize the facilities is December 2007.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is April 24, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32455.

TRD-200601623
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 14, 2006

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Notice of ERCOT's Filing for Approval of Unaffiliated Director

Notice is hereby given to the public of the March 9, 2006 filing with the Public Utility Commission of Texas (commission) of the Petition of the Electric Reliability Council of Texas (ERCOT) for Approval of an Unaffiliated Director.

Docket Style and Number: Petition of the Electric Reliability Council of Texas (ERCOT) for Approval of Unaffiliated Director, Docket Number 32492.

The Application: ERCOT seeks approval of an Unaffiliated Director of the ERCOT Board. The commission has jurisdiction over this matter pursuant to Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.151 (Vernon 1998 and Supplement 2005). Pursuant to ERCOT bylaws, ERCOT's Corporate Members have approved the selection of the Unaffiliated Director. ERCOT's Nominating Committee unanimously selected Michehl R. Gent as the Unaffiliated Director of the ERCOT Board. The director will be seated at the March 21, 2006 Board meeting and will serve pending commission consideration for approval.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or 1-800-735-2989. All correspondence should refer to Docket Number 32492.

TRD-200601624
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 14, 2006

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of Livingston Telephone Company's application filed with the Public Utility Commission of Texas (commission) on February 23, 2006 to withdraw services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of Livingston Telephone Company to Withdraw Services from its Long Distance Message Telecommunications Service Tariff Pursuant to P.U.C. Substantive Rule §26.208(h); Docket Number 32447.

The Application: Livingston Telephone Company (Livingston) filed an application to withdraw Station to Station Service, Collect/Fully Automated and Billed to a Third Number/Fully Automated, from its Long Distance Message Telecommunications Service Tariff. Livingston's reason for withdrawing is that Livingston utilizes SBC for Operator Services and SBC no longer provides the above-named services to Livingston; those services have become obsolete. The SBC General Exchange Tariff, Section 35, 8th Revised Sheet 4, effective July 5, 2005, has the above-named services deleted. Livingston stated it has no subscribing customers.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by April 24, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 32447.

TRD-200601646
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 15, 2006

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on January 31, 2006, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Bunkerhill Exchange for Expanded Local Calling Service, Project Number 32354.

The petitioners in the Bunkerhill exchange request ELCS to the exchange of Texline.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 27, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 32354.

TRD-200601622
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 14, 2006

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Notice of Request for Telecommunications Service in Texas Uncertified Areas

Notice is given to the public of a request filed with the Public Utility Commission of Texas (commission) on February 6, 2006, for telecommunications service in Texas uncertified areas pursuant to P.U.C. Substantive Rule §26.421.

Docket Title and Number: Request for Telecommunications Service in Texas Uncertified Areas. Docket Number 32392.

The Application: Stephen F. and Janet T. Smith are requesting designation of an eligible telecommunications provider (ETP) for uncertificated areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32392.

TRD-200601575
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2006

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

Roberts County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Roberts County, Miami-Roberts County Airport. TxDOT CSJ No.: 0604MIAMI. Scope: Provide engineering/design services to replace lighted windcone assembly and segmented circle, mark and overlay runway 2-20, overlay and mark stub taxiway, overlay apron and overlay and mark partial parallel taxiway.

The HUB goal is set at 7%. TxDOT Project Manager is Bijan Jamalabad, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Miami-Roberts County Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight Monday, April 17, 2006. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 PM on Tuesday, April 18, 2006. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 PM on Tuesday, April 18, 2006. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The Consultant Selection Committee (committee) will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **www.dot.state.tx.us/business/avnconsultinfo.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Bijan Jamalabad, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200601647

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 15, 2006

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Aviation Division - Request for Proposal for Private Consultant Services

In the December 30, 2005 issue of the *Texas Register* (30 TexReg 9079), the Texas Department of Transportation, Aviation Division, published a request for proposal for Private Consultant Services. The following notice is re-published with new deadlines.

The Texas Department of Transportation (TxDOT) announces a Request for Proposal (RFP) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to 120 days later. The Aviation Division (division) of TxDOT will administer the contract. The RFP was originally released on January 17, 2006 and will be re-released on March 24, 2006, and is contingent upon the finding of fact from the Governor's Office.

Purpose: The consultant is needed to review and evaluate the current activities performed by the TxDOT Aviation Division - Flight Services Section formerly known as the State Aircraft Pooling Board. The consultant will perform an in depth comprehensive review of all activities currently being performed by the Flight Services Section and will provide an evaluation and specific recommendations for changes in process and procedures. The recommendations and changes will be used to determine the overall operations, efficiency and feasibility of the Flight Services Section. By reviewing the consultant's evaluations and recommendations, TxDOT may make changes, as necessary, to ensure that Flight Services Section operations run efficiently and effectively.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide private consulting services.

Program Goal: The completion of a written report that documents the evaluations and specific recommendations for changes in the processes and procedures of the Aviation Division - Flight Services Section.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the division will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: Proposals must be prepared according to instructions in the RFP package and received on or before April 25, 2006, at 4:00 p.m. Proposal must be sent to Sherry Huff, Texas Department of Transportation, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Sherry Huff, Texas Department of Transportation, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. Telephone (512) 416-4521. Fax (512) 416-4510.

Copies will also be available on TxDOT's Aviation Division web page at **http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm**

or

http://www.dot.state.tx.us. Select: Aviation, Aviation Information, Aviation Consultant Contracts, Notice to Consultants.

TRD-200601674
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 15, 2006

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).